To Sir R. K. Wilson

from M. Sheldon Amos

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A COLLECTION

OF

PROBLEMS & EXERCISES

IN THE LAW OF EGYPT.

MINISTRY OF PUBLIC INSTRUCTION.

A COLLECTION

OF

PROBLEMS AND EXERCISES

IN THE CIVIL AND COMMERCIAL LAW OF EGYPT

BY

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TABLE OF CONTENTS.

PREFACE.

The following passage occurs in the report of the Judicial Adviser for the year 1903:—

"Practice, as it is superfluous to observe, cannot be "taught and must be gradually acquired, but a great deal "more could be done, I think, than is usually done at "present, in the direction of making the teaching of law less "abstract and theoretical and in reducing legal principles "to a concrete form in which they may be readily grasped "by the novice. Notably students should be made to "study collections of judicial decisions (such as the Mixed "and Native Bulletins of jurisprudence—*and other collec-* "*tions of law problems, specially suitable to students, should* "*be prepared*) to analyse the case reported and to show "that they understand the application made to the facts "of specific articles of the Code with which—in their "abstract terms—they are familiar....."

The two methods of legal study here contrasted may be distinguished as the *didactic* or *deductive* method, and the *Socratic* or *inductive* method. Until recent years, organised and methodical legal study was everywhere conducted on the former lines. In the course of the last generation however a movement in favour of the more concrete method of study has shown itself in two very diverse centres of legal life—in America, and in Germany. (1)

(1) The leading spirit in this movement in America was Professor Langdell, of the Harvard Law School, who, some thirty years ago, introduced that system of teaching law exclusively from collections of decided cases which is now almost universal in America.

In Germany it was Rudolf von Ihering, the illustrious author of the "Geist des Römischen Rechts" who, with his "*Civilrechtsfälle ohne Entscheidungen*" and the "*Jurisprudenz des täglichen Lebens*" was, we believe, the first to give the study of concrete cases and problems a recognised place in the academic curriculum.

Legal studies in Egypt are entirely under the influence of the traditions and practice of the law schools of France; and in France the movement to which we allude, though it has begun to make progress, has, so far, not given birth to any literature with which we are acquainted.

The arrêté of April 30, 1895, developing a practice already authorized by the arrêtés of 1855 and 1881, gives a new place to practical studies in the French faculties of Law, by permitting the various teaching bodies to entrust their supervision to suitable persons outside the professorial body. Under these regulations several of the Universities have organised *Écoles de Notariat* and other practical schools which have proved highly successful. Nevertheless it remains true that in the country from which Egypt draws its principle legal inspiration the idea of the teaching of theoretic law by disputation on concrete cases is less developed than in either of the other countries mentioned.

What form should practical studies in a law school take? On the one hand there can be no question, in a school which imparts instruction in a system derived from the Code Napoleon and the traditions of Continental Europe, of attempting to teach law from a study of the decisions of the courts alone. On the other hand it is useless to attempt to make the student, during his years at the law school, an expert practitioner. It is not from his professors that he must learn how to draw a summons, or how to draft "*conclusions*." The utmost that the most practical studies in the law school can do for him is to imbue him with the legal instinct which will enable him to seize upon the vital points in a given body of facts,—those points which merit the place of minor premisses in

the legal syllogisms, which, whether as advocate or as judge, it is his business to construct as accurately and as exhaustively as possible. It is only when he has an acquaintance with a very large body of examples of legal principle in action, that the student can hope to have an informing sense of the amount of meaning which is implicitly contained in the neat phrases which he repeats so glibly in the examination room.

It is as a very modest contribution towards enlarging the mental vision of beginners in the study of the law in Egypt, that the authors offer this collection of problems to their colleagues and pupils.

M. S. A.
P. A.

Cairo, February, 1904.

PROBLEMS AND EXERCISES

IN THE LAW OF EGYPT.

I.—OF PROPERTY.

§ 1. Possession of Immovables.

1 — A. and B., both native subjects, are joint owners, each for a half, of two feddans of land. They make an agreement in writing whereby each is to take one feddan, and cultivate it separately, for a term of five years. B. subsequently leases to X. the benefit of the above mentioned agreement. X. takes possession of the feddan cultivated by B., and occupies it for over a year. Later on A. takes advantage of X.'s absence to take peaceable possession of the land in question. X. brings the possessory action of "complaint" against A. A. defends this action on the ground that his agreement with B. cannot be assigned without his consent and that, even if this were not so, such agreement created no real right, and consequently B., and therefore X., cannot maintain a possessory action in respect of the divided feddan, but only (if at all) in respect of the undivided half share.

X. replies that the agreement created either a leasehold or a usufruct, and in either case can be assigned, and that the interest created supports a possessory action.

2 — A. is in peaceable possession of a town lot: has he a possessory remedy against B., who suspends electric wires over his land, without attaching them to anything standing thereon? (Cf. Dall. Per., 1900, 2, 361.)

§ 2. Usufruct.

3 — A. has a usufruct of a house surrounded by a garden, terminable on his death. The house is burnt to the ground, the

cause of the disaster being undiscoverable. A. thereupon cleans away the débris, and rebuilds the house. B., the bare owner comes once or twice a week to visit the works. Six months after the house is finished A. dies insolvent. From whom can the architect and the builder obtain payment? Who is finally liable there for? Would it affect the case if B. has given his consent in writing to the house being rebuilt? Would it make any difference if the house was or was not inhabited at the time of the fire?

Supposing that A. has insured the second house, and that it also was destroyed by fire during his lifetime, to whom ought the insurance company to pay the insurance money? What if this second fire occurred after A's death, but during the period covered by the last premium paid by him? (Cf. Native C.C., Arts. 26 and 65; Mixed C.C., Arts. 45 and 90-91.)

4 — A. owned a grocery business at Tantah. In August, 1890, he gave a usufruct therein for life to B., on the occasion of the latter's marriage with his sister. The business comprised:—

(1) A three years' lease, of which two years and three months were still to run at the above mentioned date and which was renewable at the option of the lessee for two further terms;
(2) The fittings of the shop together with carts, horses, etc.;
(3) The stock-in-trade, valued in the contract at £E.500;
(4) The good will, to which no reference was made in the contract.

Neither inventory nor surety were given nor asked for. In January, 1892, B. pledged an undivided half share in the business to C., to secure a loan of £E.100, and C. took possession of the shop, jointly with B.

As soon has he heard of this transaction A, claimed the forfeiture of the usufruct, the restitution of possession of the shop, fittings, etc., the delivery of £E.500 worth of stock, or its equivalent in money, and damages for alleged diminution in the value of the good will.

What defence? What judgment?

§ 3. Servitudes.

5 — Are the following "rights" of a nature to be recognised as servitudes?

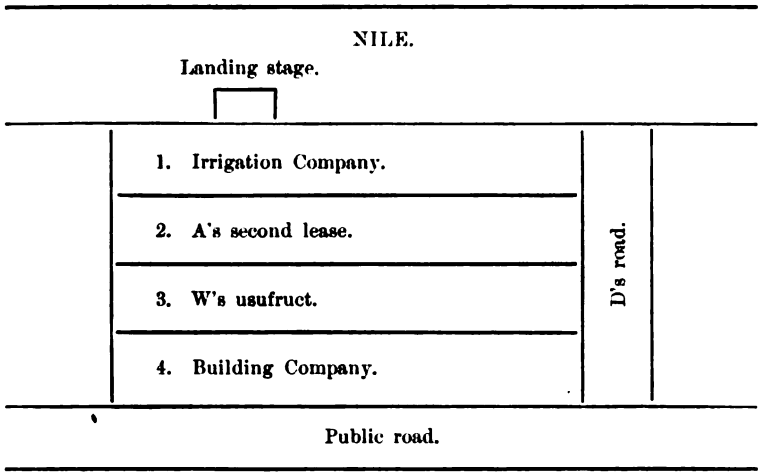
(*a*) The right to heap household refuse on a neighbour's land until certain depressions are filled up and no longer.

(*b*) Right for all occupiers of A's house to have free access to a theatre to be built upon a neighbouring piece of land purchased from A.

(*c*) Right of a schoolmaster to use a certain piece of land as a playground for his pupils, so long as it is not built upon.

(*d*) Right of a schoolmaster not to check the noise made by his pupils.

6 —



The above is a plan of the estate of one B. This property contains 500 feddans and is bounded on the east by the Nile, on which side there is a landing stage, on the west by a public road, on the south by a road belonging to one D., and on the north by the estate of another person.

The whole of this estate was at one time leased to A. The lease contained no accurate description of the lands, which were

mentioned as being "B.'s estate, well known to the parties." A. was in the habit of using D.'s road, believing it to be public.

B. died leaving an heir C. and a widow W. By his will he made a proper division of all his property between them, one article in the arrangement being that C. was left the whole of the estate in question, subject to a usufruct of half thereof (strips 3 and 4 in plan) left to W.

The following year A.'s lease expired, and both C. and W. called upon A. to give up possession. C. however immediately renewed the lease, so far as he had power to do so, for a term of six years, but confined its extent to strip 2 (in plan).

Shortly afterwards C. leased strip 1, on the bank of the Nile, to an Irrigation Company, for a term of 99 years; in 1902 he sold strip No. 4 to a Building Company, W. having abandoned her right of usufruct over this part of the estate. Neither of these two contracts contained a description of the lands leased, but simply the declaration that the land to be leased is well known to the parties.

D., the neighbour, now raises objection to any use being made of his road by any of the possessors of B.'s estate.

The Irrigation Company claims the right for any of its employés to cross strips 2, 3 and 4 to reach the public road, to which claim the possessors object. Similarly A. claims the right to cross strip 3 and W. claims the right to cross strip 4.

The parties have similar disputes arising from the claims of the holders remote from the river to use the landing stage, and to cross the intervening strips to reach it.

The Irrigation Company claims to be entitled to let the water raised by its pumps drain on to A.'s land. On what can such a claim be based? Will A.'s liability be affected by the fact that W. and the Building Company are under no such liability?

Finally the parties claim that they are entitled by prescription to utilise D.'s road.

7 — The International Rifle Club at Assiout wished to establish a long-distance shooting range. It already possessed a small plot of ground, on which stood the club house, and from which it was

proposed that the shooting should take place. After various negotiations it obtained permission from the Government to put up

some targets (solidly built with masonry) on unoccupied desert land belonging to the Government, at a distance from its own land of about 500 metres. The intermediate space was occupied by a large field belonging to A., from whom permission was obtained to shoot over his land at certain hours of the day, on certain precautions being taken. A.'s license was granted in consideration of the payment of £50 down, and was not limited in respect of duration.

The Government sells its land to P. and A. sells his land to Q.

Has the Rifle Club a right of servitude either over P.'s or Q.'s land?

Can it acquire such a right in either case by prescription?

8 — A., a native subject, owned a house surrounded by a garden and adjoining the Khalig in Cairo. Returning from a prolonged absence in Europe, during which time his house has been occupied by his elderly mother, he finds that the Khalig has been filled up, and that consequently for the past year the irrigation of his garden has been impossible, although no judgment has been given against him.

He sues the Egyptian Government before the native Court, claiming the restitution of the supply of water on which he has been accustomed to rely for the last forty years, and in the alternative damages for the loss and inconvenience which he has suffered or must suffer in the future.

The Government asks for a non-suit, on the ground that the Khalig was filled up by the Cairo Tramway Company (a Belgian Company) in pursuance of a concession conferred upon it by the Government.

Secondly, the Government pleads that the court is without

jurisdiction, (1) in view of the fact that the interest of the Tramway Company in the suit in "Mixed interest": (2) in view of art. 15, § 4 of the decree of June 14, 1883.

Finally, on the merits, the Government pleads that under arts. 9 C.C.N. and 25 and 26 C.C.M. the property of the Government is imprescriptible and cannot become the subject of rights in private persons except by a law or decree. In any case a servitude cannot arise from acts which have been simply permitted, without being done adversely.

The plaintiff replies that the Tramway Company was the mere representative of the Government—a fact which excludes the "Mixed interest," and makes the Government alone responsible for its acts. Art. 31 C.C.N. and art. 52 C.C.M. speak of the right of user in the canals constructed by the State. The servitude claimed was rendered visible by steps and a sakieh.

9 — In 1860 A. built a house at Beni Souef abutting on one side upon B.'s, and in fact supported by it. In 1895 B. began pulling his house down. A.'s house was at this time unoccupied, and as A. himself lived in Cairo, he let B.'s proceedings pass unnoticed. B. finished the work of pulling down his house, and then abandoned operations. About this time A. sold his house to C. C. went to inspect the property, and at first all seemed well. Shortly afterwards cracks began to appear, and the house threatened ruin. Has C. any right of action against B.? What if the house actually fell down?

10 — A.'s land adjoins B.'s. For more than fifteen years past a thick belt of trees has stood on B.'s land on the confines of the two properties, affording shade during a considerable part of the day to a certain area of A.'s land. Profiting by this shade A. has been able to cultivate strawberries and other delicate plants. B. now proposes to remove the trees. Can A. prevent his doing so on the ground that he has acquired a servitude by prescription? Will it affect the case if it appears that A. has only in fact profited by the shade to cultivate the class of plants mentioned during the past four years?

11 — A. has a house one wall of which adjoins a vacant lot belonging to B. In A.'s absence B. builds a house on his lot, in such a manner that it depends for support upon A.'s wall. B. then sells the house to C. Has A. a right of action against B., or C., or both? And if so, what is its nature?

12 — The most convenient way from the railway station at X. to the village of Y. is along a path which crosses (1) certain fields belonging to A., and (2) the "Gurn" of the village of Z. This path has been continuously used by all the inhabitants of Y. for five and twenty years, since the time when the railway station was first opened. Has this use created any right of servitude, and if so, in favour of whom? In case of interruption of the passage, is the omdeh of Y. entitled to sue on behalf of his village?

13 — A. sold B. an undivided half share in a field, reserving however to himself a right of passage across the said field in order to have access to another piece of land which he retained as his exclusive property. Subsequently A. sold to B. the remaining undivided half share in the field first mentioned, but omitted to make any stipulation with regard to the right of passage. Does it still subsist?

14 — A. purchases a portion of a plot of land belonging to B., and agrees by a clause in the contract of sale, to pay B. £10 yearly, for an indefinite period, for every year in which B. shall refrain from building on the remaining portion. Is this clause valid? If not, does its avoidance carry with it the avoidance of the sale? Does it create a servitude over B.'s land? Is it prescriptible? and if so how, and when?

Supposing that half the portion remaining in B.'s hands was shortly afterwards expropriated by the Tanzim for a public road, would A. be entitled to any reduction in the annual payment?

§ 4. Wakf and Hikr.

15 — Zeid, the Nazir of a Wakf, constituted a Hikr in favour of Omar, the Hikr rent to be payable monthly. Omar built a

house upon the ground. Five months after the date of the constitution of the Hikr, a revolution broke out in thecountry, and a great number of people, including Omar and his family, fled abroad. Peace was soon restored, and before the year was out Omar was able to return to the enjoyment of his possessions. But anxiety had undermined his constitution and he shortly afterwards died. His heir immediately proceed to sell the house above mentioned to one Hafiz. Up to this time no one instalment of the Hikr had been paid.

Four months after the sale, Zeid sued Omar's heirs and Hafiz, asking:

(1) that Omar's heirs should be ordered to pay the arrears of Hikr up to the date of the sale;

(2) that as from that date on they should be held jointly and severally liable with Hafiz for the same;

(3) that the contract of Hikr should be set aside for non payment of the Hikr rent during a period of two years; and on the further ground of Omar's death;

(4) that in any case the sale to Hafiz shoud be set aside, the latter's good faith being without influence on the case.

16 — X. constitutes a Wakf of a certain house, and directs that at his death Y. shall be nazir, and that such and such persons shall be beneficiaries. On X.'s death, Y. takes up his duties, and finds that the house is leased to A., on the terms that the lease is to terminate on X.'s death. Y. calls upon A. to leave the premises, in order that they may be delivered over to M., whom Y. holds to be the proper beneficiary under the Wakfieh. A. refuses, on the ground that the true beneficiary is his wife, B. Meanwhile A. has offered, and Y. has accepted, arrears of rent for a term previous to X.'s death. A. has never hitherto occupied the house, but promptly does so. Does a possessory action lie against A. or B.? Is Y. a proper plaintiff without the joinder of M.? Has the native Court jurisdiction?

17 — A. is the beneficiary for life, under a wakf, of a house, which he insures against fire. The house in destroyed by fire. What legal situation is created?

18 — A building belonging to a Wakf is leased. Owing to its defective construction, it succombs to an earthquake shock, and in falling injures the lessee and does a considerable amount of damage to his property. Has the lessee any remedy : (1) against the Wakf ; (2) against the Nazir personally ; (3) against the beneficiaries ? If the Nazir or beneficiaries are held liable, have they any right of recourse against the Wakf itself ?

II. — MODES OF ACQUISITION.

§ 1. Occupation and Accession.

19 — A. (a foreign subject) is the owner of a garden planted with thick trees. B. (a native subject) whose windows look over A.'s garden, asks the latter's permission to remove two trees which darken his (B's) windows. A. gives the desired permission, on condition that B. shall plant five other trees in his garden, at places indicated by him. B. consents, removes the trees which inconvenienced him, and plants the trees desired by A.

Six months later A. sells his property to C. C. goes to look at his acquisition and, finding to his surprise that B. is in possession, informs A., who immediately applies to B. for an explanation of his conduct. B. replies that he has acquired the ownership of the garden under art. 89 of the Mixed Civil Code.

Is B. right? If so, has A. any personal right of action against him? What are the relative positions of B. and C.? Would C. be preferred to B. if he had transcribed his title? If so, how could B. have guarded against such preference?

Would the position of the parties be different

(1) If B. were the lessee of the garden from A.;

(2) If B., without being in possession of the garden, had obtained permission to plant trees therein in order to improve the outlook of his house?

20 — In 1885 A., the owner of a certain plot of kharadgi land in Upper Egypt, ceased to cultivate it. In 1899 B. took possession of this land without title, and began to cultivate it. In 1902 A. brings a revindication action againt B. Is this action barred by prescription (1)?

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(1) Note that it is received doctrine in France that in spite of art. 2262 C. C. the right of ownership cannot be lost by non user.

Cf. however the Territorial Law of 1858.

What is the present state of Egyptian land law, and is it necessary to consider how far it is retroactive? Notice that A.'s non user began after the promulgation of the Mixed Codes, but before that of the Native Codes in Upper Egypt.

§ 2. Usucaption of Movables.

21 — A. was an Alexandrian coal merchant who habitually had considerable quantities of coal stored in bond. B., his clerk, was authorised to withdraw loads of coal from bond from time to time, by means of signed orders in favour of A.'s customers. Having carried on business in this way for some time, B. conceived and executed the following plan of fraud. He gave a series of orders for coal in favour of one "X.," who in fact was none other than himself under an assumed name. Carters fetched away the coal from the bonded stores on "X.'s" behalf, which coal B. resold, always in the name of X., to various purchasers, among others being P., a retail dealer at Tantah.

A. finally discovered the fraud, at a time when P. had purchased about £500 worth of coal, of which £300 worth had been paid for, and of which about £100 worth was still in his possession. P. had acted in good faith throughout, and, as he lived in a different town, had only communicated with "X" by correspondence. Has A. any right of action against P?

22 — A. and B. are co-owners of a Crédit Foncier obligation payable to bearer. B. has detention thereof.

A. goes to B.'s house in his absence and takes the obligation and sells it to D. for 270 francs, C., a broker, acting as intermediary.

Three days later the obligation wins a prize of 50,000 francs.

B. thereupon revindicates the obligation from D., offering to repay him the 270 francs for which he had purchased it. He sues C. at the same time, claiming that he is liable to make up to him the value of the obligation in the event of the failure or non satisfaction of his action against D.

B. is prepared to prove that C. did not call upon A. for any proof of his title to the obligation, and that all documents and accounts relating thereto had in fact remained in B.'s possession.

D. claims the benefit of the rule that in the case of movables possession is title.

C. relies upon his good faith and the customs of his profession.

23 — A. has a servant B., who is deeply indebted to a usurer, C. B. steals £50 from A.'s desk. The same evening he repays £40 to C. asking the latter to give him 5 separate receipts dated at different times. Supposing A. can satisfy the court that C. was either in bad faith, or showed culpable negligence in failing to satisfy himself as to the origin of the money, and that the £40 paid to C. was in fact part of the money stolen, can the court condemn C. in a civil action to restore the £40 to A.?

24 — A.'s horse was one night stolen from its stable. Some time later A. recognised the horse in B.'s carriage, and claimed it from him. On being told the facts B. replies that he is willing to restore the horse, but not until he has been paid (1) £40 which he paid X., the horse dealer, for it; (2) £10 which he has expended upon it for medical treatment. What are the rights of the parties?

25 — A. is a jeweller, to whom a watch, belonging to B., has been entrusted for repairs. A. sells the watch to C., who purchases it in good faith.

Can either A. or C. claim the rescission of the sale on the ground of art. 264 C. C. N.?

26 — A. appropriates lost property belonging to B., and sells it to C., knowing it to be lost property. C. is in good faith. B. revindicates the property in question from C., who claims indemnity from A. Is the measure of the indemnity due (art. 265 C.C.N.) (1) the price paid by C. (2) the intrinsic value of the property at the time of revindication or (3) its value at the time of the purchase?

27 — A. while on a journey, lost a valuable gold watch for which he had shortly before paid £50. As a matter of fact he

had left it in a railway carriage, where it was found, and delivered up to the Railway Administration. Six months afterwards, the watch, not having been claimed, was put up for sale by the Administration. The sale was advertised as an "Auction of objects found on the premises of the Administration during the past year." At the sale B., a jeweller, bought the watch for £10. He exposed it for sale in his window, where A. saw it. A. claimed his watch, but B. refused to restore it. Immediately afterwards, and before A. took any further step, B. sold the watch to a traveller who was leaving the country, for £20. A. sues B. for £45, the value of the watch. Can A.'s action be supported by the principles of revindication? Can B. be said to have purchased the watch in good faith? If so, is he entitled to counter claim for the price paid? Is the fact that he is no longer in possession an absolute defence? Is he liable on the principles of unjust enrichment, and if so, to what amount?

28 — A., on discharging his servant Mohammed Hassan, gives him a testimonial to character. Some time later A. happens to be in the company of a friend who is interviewing several candidates for employment as servant. One of these, calling himself Mohammed Hassan, (being other than the person of that name first mentioned) produces A.'s testimonial, representing it to have been given to himself. A. takes possession of the paper and destroys it. Is he entitled to do so: (1) as against the possessor, (2) as against the original recipient? Would it make any difference if the latter had parted with the paper honestly — as for instance by way of deposit?

§ 3. Usucaption of Immovables.

29 — A., in bad faith, takes possession of B.'s land in 1880, and leases it the same year to C., at a rack-rent, for a term of 50 years. C. takes possession under the lease and pays the rent for 5 years, after which he pays nothing. Can B.'s heirs recover the land in the year 1904?

29*a* — In 1895 A. sells 5 feddans of land to B. by private document. B. takes possession. In 1902 X. brings a revindication action against B. B. raises the defence of prescription with just title and good faith.

X. replies that there is no just title valid against him

(1) Because the sale has not been transcribed;

(2) Because in any case it has not acquired a legally ascertained date, and in the absence thereof, the document has no probative force as against him (art. 228 C. C. N.)

B. rejoins : as to (1) that art. 228 only applies where it is sought to rely on a contract as conclusive against third parties. Whereas here he (B.) does not rely upon the sale as a contract, but merely as one of the conditions required to colour his possession. He therefore claims to prove its date by witnesses.

30 — A. and B., both Egyptian subjects, are proprietors of adjoining lots of kharadgi land. A. hires B.'s plot, under a lease renewable by tacit reconduction. In 1895 A. sells both his own land and B.'s to X., an Italian subject, having obtained a procuration from B. for that purpose. The two lots are sold in the same contract. X. neglects to register his title, but remains in peaceable possession of the land from the date of the contract until the year 1902. In the latter year B. revindicates the land sold on his behalf by A., denying having given the latter a procuration. X. is unable to prove that A. had any such power as was recited in the contract of sale, but raises the defence of acquisitive prescription.

What are the two alternative arguments which X. may use in support of this defence?

What if the land sold by A. on B.'s behalf was Ushury, and that 16 years had elapsed since the sale? Has X. any recourse against A? Supposing that X. loses his case, can A. defend an action in warranty by invoking extinctive prescription?

31 — In the year 1890 A. purchases 100 feddans of land from B. The contract of sale describes the land as "the property purchased by B. from X. in 1887": it is also recited that the

contract in question has been accidentally destroyed by fire, and it is agreed that A. shall be satisfied with B.'s declaration and shall not require production of the document in question. A., who is in perfect good faith, neglects to have his contract registered. In 1901 X. brings an action, which is successful, to have the contract of 1887 set aside; and C. brings suit to revindicate 25 feddans of the same land, which he alleges B. to have seized and possessed without right.

A. being in good faith, can he rely upon acquisitive prescription, and if so against whom (1)?

32 — A. sells B. an undivided half share in a field. At the time of the sale the field is leased to C. A continues to receive the rent, which he divides with B. At the expiration of C.'s term (one year from the sale) it is renewed by A. and B. in their joint names for three years. At the end of this second term (i.e. less than five years after the sale) A. and B. enter into a written agreement for the division of the field, and take possession of the portions assigned to them. Two years later X. seeks to revindicate the whole field from A. and B. It is clearly shown that A. had no title and has not prescribed. Supposing B. to have been in good faith throughout, can he claim to have prescribed: (1) an undivided half share in the field; or (2) the separated half assigned to him?

33 — In 1890 A. purchased three feddans of land, in good faith, from B., the apparent owner, paying therefore £250. In 1900 the true owner of the land, X., comes forward, and offers proof that the land in question was contained in a grant made by the Government to his father, whose wekil B. had been, and, that B. had usurped it in bad faith. Assuming that he cannot revindicate (is he right in this assumption?) X. sues A. for unjust enrichment, assessing his claim at £150, which he alleges to be the difference between the present value of the land and the price given for it by A. What is A.'s defence (2)?

(1) Cf. PLANIOL. I p. 490 §§ 1428-9, and note 1.

(2) This apparently simple but really rather troublesome question was we believe first raised by Ihering in his essay on the Action for Unjust Enrichment against the Possessor in Good Faith, published in "Iherings Jahrbuch" for 1878.

§ 4. Preemption.

34 — The Lower Egypt Land Company declares its intention of exercising its right of preemption (as neighbour) over a piece of land adjacent to property which it already owns in Cairo. The purchaser resists the preemption claim on the ground that the sole object of the Company, as set forth in its Statutes, is to purchase land for the purpose of resale, and that the law is not designed to give the right of preemption in such a case.

35 — A. owns a property in the Abbassieh quarter consisting of a house surrounded by vacant building land. This land is limited on one side by a circular pond of about a feddan in area, which is permanently filled with water about a metre in depth. This pond belongs to A.

A.'s neighbour, B., owns a house, the garden of which adjoins the pond and abutts on it for about half its circumference.

A. sells his property to C; and B. claims the right to preempt. This claim the purchaser resists on the ground that the conditions required by the law for preemption are not fulfilled.

36 — A. is B.'s neighbour. B., who is thinking of selling his land, obtains from A., in consideration of the payment of a sum of money, an undertaking not to exercise his right of preemption. B. then sells his land to C., and A. shortly afterwards files his declaration demanding to preempt, and summons both B. and C. in the action. Does the afore mentioned undertaking bar his right of preemption? What if it is invoked : (1) by B. and not by C ; (2) by C. and not by B? In the latter case, will it make any difference if B. has released A. from his engagement : (1) before the filing of the preemption declaration ; (2) before judgment? Does the contract in question create a real right of any sort?

37 — A. sells an immovable to B. for an avowed price of £1,000. By "contre-lettre" it is agreed that the true price payable shall be £500.

X., a neighbour of A.'s, registers a preemption declaration

(with offer of the £1,000). B. has previously hypothecated the immovable to Y. ; and the hypothec has been registered before the preemption declaration.

Can X., who intervenes in the suit, have the simulation declared, as against Y., and have £500 established as the true price payable?

37 *a* — In 1898 A. purchased from X. for the sum of £1,000 a piece of land in Cairo. It was further agreed between the parties that the vendor should be entitled, at any time within two years, to redeem the land sold on repayment of the price.

In 1899 V., the owner of an adjoining piece of land, sold the same to B. Thereupon both A. and X. take the necessary steps to make good a claim to preempt, each asserting as against the other that he is entitled to do so. B. denies that either is so entitled. At the same time X. looks about for £1,000 in order to redeem his land.

Meanwhile V., who has remained in possession of the land sold by him, finds a treasure buried therein.

Shortly afterwards, legal proceedings having already been begun between the parties in dispute, A. and X. both die of cholera.

(1) Can the heirs of A. and X. continue the proceedings undertaken by them?
(2) To whom should V.'s land be adjudged?
(3) To whom does the treasure belong?

§ 5. Joint Ownership and Partition.

38 — X. dies leaving a modest fortune in investments and a villa at Ramleh. His two sons, A. and B. who are his sole heirs, divide the money, and, as regards the villa on January 1895, they make the following contract:

"A. and B., joint undivided owners of the Villa El-Nousah situated at Ramleh, desiring to put an end to the present state of undivided ownership between them, agree as follows : each party shall have possession of the said villa, and enjoy and exploit

the same in the most unrestricted manner, during every alternate year, on the sole condition of scrupulously respecting the rights of the other party. A. shall have possession during the first year. The expense of structural repairs shall be borne by the two parties equally."

At the time that this contract was entered into A. and B. were both Government servants, and were in the habit of spending their biennial vacations in Europe in alternate years.

At the end of the year 1901 A. resigned his office, and forthwith notified to B. (who was about to take possession of the villa in his turn) his intention to take proceedings for the judicial sale (*licitation*) of the villa, the ownership of which he asserts to be still undivided in spite of the contract of 1895.

Is A. right? If so, is B. entitled to any compensation, either on the ground that A. has had more use of the villa than he, or on the ground that A. has broken the contract of 1895?

39 — In the year 1890 A. gave certain property to his son B. and to his daughter-in-law C., on the occasion of their marriage, in equal undivided shares, and stipulated in the act of gift that the property should not be divisible during the joint life time of the grantees.

In 1895 B. sold his undivided share to X. who paid the price. C. then very naturally sought to come to an agreement with X. for a friendly partition, but they were unable to come to terms. C. then, in the year 1900, brought an action against X. for compulsory partition, which X. resisted, relying on the terms of C.'s title. What decision?

Supposing C. and X. had come to an agreement and made a friendly partition, and that after C.'s death her heirs felt discontented with the share descending to them, would they be entitled to claim a judicial partition: (1) against X.; (2) against X.'s assignee?

40 — A., B. and C. entered into a partnership for the purpose of purchasing a large estate situated in the suburbs of Cairo, with a view to breaking it up into building lots, laying down streets, building houses, and disposing of them to the public.

It was originally agreed that the parties should contribute equally to the expenses of the undertaking ; but when it came to the point A. found himself called upon to take very much the larger share of the burden. While the scheme was being carried out, and after the purchase of the estate in question, B. contracted a loan of £5,000 from X., to secure which he gave X. a hypothec over the partnership property. Subsequently considerable portions of the land were sold off to various persons, among other purchasers being P. who acquired a block of land for the price of £9,000, subject to short term of credit. Immediately afterwards A. took preceedings for the liquidation of the partnership and partition of its property.

On an account being taken it appeared that, in view of A.'s advances over and above his stipulated share, B. and C. were in his debt. B. being, in consequence of the position of his private affairs, insolvent, the question then arose as to the respective rights of A. and of X. to the £9,000 due from P. What solution ? (1).

41 — A., B. and C. are Egyptian subjects, and partners. They have a foreign creditor X. to whom they jointly owe £100. A. succeeds in obtaining the assignment of this debt to himself for £40. On the liquidation of the partnership A. claims in respect of X.'s debt for £100. Is he justified in doing so? Will the question whether or no he has notified B. and C. of the assignment previously to the commencement of the partition proceedings affect his position ?

(1) Rev. critique, 1890, p. 4 ; PLANIOL III § 2401.

III. — INTELLECTUAL RIGHTS.

42 — A., a young man of hitherto unrecognised, but none the less brilliant, talent as a writer, before leaving for a journey in Europe confides to his friend B. the manuscript of a romance which he has just finished, requesting B. to read it, and if necessary to make alterations.

Shortly after A.'s departure B. suddenly dies. His heirs proceed without delay to sell his personal effects, and the grocer round the corner purchases for a few piastres half a dozen kilos of waste paper, including A.'s immortal work.

On his return A. searches in vain for any trace of his book. He had given up all hope of recovering it, when one day he chanced to see in the columns of the "Reverberator," a newspaper published at Damanhour, the following notice: "We shall shortly publish a remarkable romance by an anonymous author, entitled "The loves of Cleopatra and Cæsar, a historical novel." Recognising the unusual title as being that of his own work, A. promptly applies to the editor of the "Reverberator" for the return of his manuscript. The latter replies. "I bought it a few weeks ago from a pedlar ; it is my property, and I propose to keep it." A. thereupon sues him, asking (1) that he be enjoined, subject to a penalty, from publishing the work in question; and (2) that he (the plaintiff) be permitted to take a copy thereof.

43 — A. makes a journey to certain foreign countries, and while abroad writes a series of letters to his friend B., describing the countries he has visited and commenting freely on their government, rulers and institutions. Shortly before A.'s return, B. dies, and his brother C. obtains possession of the letters, which he immediately decides to print. When A. returns he finds that the whole of the letters have been put in the hands of a printer D., and are already in type. The publication of the letters would be both disagreable and injurious to A., bringing him into prominence as a political writer, a position which he by no means desires. What remedy ought he to ask for, and against whom?

44 — A., a printer, prints and publishes an edition of the native codes in Arabic. He is promptly sued by the Government which claims damages and the destruction of all the copies printed (1) on the ground of breach of copyright and (2) on the ground of the numerous and grave inaccuracies in the text.

A. replies (1) that the text of the codes is *res communis* and (2) that, in the alternative the fact that the Government has allowed the codes to go out of print is equivalent to an abandonment of its copyright.

Does an action lie against A. by C. a lawyer, who claims damages for the results of the errors he has been led into by relying upon A.'s inaccurate text?

Will the problem be affected by the question whether the case is a mixed one or no? If it is a mixed cause, will the Commercial Chamber have jurisdiction? If the Government succeeds in its action against A., will it be entitled to revindicate copies of A.'s codes in the possession of third parties? If so, on what, if any, conditions?

(Alex. 21 Janv. 91. B. III, p. 127; Gouvernement Egyptien c. V. Zuchinetti.)

45 — Sheikh Amin Zeky, an Afghan subject, takes short-hand notes of the lectures on the Koran given at the Azhar by Sheikh Mahmoud, and publishes them under the title of "Commentaries on the Koran after the teaching of Sheikh Mahmoud, collected and edited by Sheikh Amin Zeky." Sheikh Mahmoud sues Sheikh Amin Zeky before the Cairo Native Court for £2,000 damages and for the destruction of all the printed copies of the work.

The defendant pleads to the jurisdiction and resists the claim on the merits.

46 — A. made a translation into Arabic of an English historical work. After his death, on partition of his property, his books and papers were assigned to his only son B. B., by arrangement with a printer, caused the translation to be published and derived a considerable sum of money from his share of the

proceeds. Have A.'s other heirs, C. and D., any right to recover from B. their proportional share in these sums? What court is competent?

47 — A., a native photographer at Abbassiyeh notices one day in the shop window of B., a native dealer in artistic furniture in the Mousky, some Japanese screens on which are painted in water-colours groups of Arab women composed and photographed by himself (A.) the previous year.

A. sues B. before the Native Court for £100 damages and claims the destruction of the offending objects.

B. replies (1) by denying that A.'s pretended right is recognised in Egyptian law, (2) by asserting and offering to prove that he has acted in perfect good faith, and (3) by arguing that the proper defendant is C., the Tokio merchant from whom he imported the screens in question.

48 — Paul Dupont, a French subject, settled in Egypt about the year 1850 under the name of Paul Durand, which, he thought, sounded better than his own.

His son Pierre, who was born in 1848, was registered at Lyon under his father's true name, but always passed under the latter's ficticious name.

Paul Durand, a Belgian subject, also a resident in Cairo, sues the false Paul Durand in the year 1900 before the Mixed Court, asking that he be enjoined from using the name of Durand, subject to damages of £100 for every breach. Can he succeed? Can the right to a family name be acquired by prescription?

In what cases does a right of action lie against a person who uses the plaintiff's name?

IV. — JURISTIC PERSONS.

49 — The Norwegian Benevolent Association of Cairo has 902 members, including all the Norwegians resident in Cairo, and two Finns. The Association owns several valuable immovables and has considerable funds at the bank.

Forty years after its foundation one of the members, A., brings an action against his fellow-members for the partition of the property of the association among the members.

The President, sued as one of the joint undivided owners, appears alone in court to meet A.'s claim.

The heirs of B., the founder of the association and president thereof until his death six months previously, intervene in the cause, claiming that the association property belonged to the estate of their de cujus, as it was acquired in his name.

C., who had sold a house to the association a year previously, intervenes with the claim that the sale ought to be rescinded (although half the price has been paid) on the ground that the purchaser was the *soi-disant* agent of a person having no legal existence.

50 — The International Club of Cairo is composed of 800 members of various nationalities. The rules of the club provide among other things that it shall be governed by a committee elected by the members but make no provision for the ownership of club property, for liability for club debts, nor for the mode of its dissolution. The domestic arrangements of the club are conducted by a manager, who undertakes, by a verbal agreement, to look after the catering, to engage servants, and to keep up the club-house, in return for the profits on meals, wines, spirits and tobacco. The club is lodged in a building which is taken on lease for 25 years from the owner, the lessee being B., the president at the time the lease was taken, described in the contract as such, and expressed to be acting as representative of the International Club.

A few years after the foundation of the club, the club-house is burnt to the ground, the neighbouring houses being also injured. All that is known as to the origin of the fire is that it must have started in the club-house. At this time B. is dead, and all the original members of the committee have either died, retired from the club, or been replaced by other committee men. One consequence of the fire is the *de facto* dissolution of the club. Who, if any one, is liable:

(1) for the damage done by the fire ?
  (*a*) as regards the landlord ?
  (*b*) as regards the neighbours ?
(2) for unpaid arrears of rent?
(3) for unpaid gas and water bills, and for the price of furniture, food, wines and spirits supplied to the club ?
(4) For six month's arrears of wages due to the club servants ?

Are the members liable for unpaid subscriptions and if so to whom ? To whom does a fund of £200 standing in the name of the club at the bank belong ?

What questions of procedure arise ?

The following further difficulties arise in the case:

(*a*) Of the 800 members of which the club is believed to have been composed the creditors cannot identify more than 275. All the books have been destroyed. The names of sixteen members, who resigned a fortnight before the fire in consequence of a row, are known to the public, having been published in a newspaper.
(*b*) The president and the manager are insolvent.
(*c*) Officers of the Army of Occupation and members of the International Club of Alexandria are, of right, non paying members of the club. The creditors are in possession of a certain number of letters from such members accepting an invitation to a *soirée* recently given by the club.

What bearing would it have on the case if it were held that the contract with the manager ought to have been in writing and registered ?

V. — CONTRACTS IN GENERAL.

§ 1. Consent and Parties.

51 — A. has a pet dog, which he loses. He advertises in the newpapers for the dog, offering a reward of £5 to the finder. B. finds the dog, and having ascertained from its collar the name and address of its owner, brings it to A.'s house, *without having seen the advertisement.* B. is subsequently informed of the advertisement, and claims £5 from A. Is he entitled to it?

52 — A. is a tailor. He has in his window a finely embroidered bey's uniform marked £20. B. seeing this, goes into the shop and offers to buy it. A. replies that the uniform in the window is not for sale, but that he will make a similar one for £40. B. insists that he is entitled to the uniform in the window at the advertised price, the ticket thereon constituting an offer which he has accepted. Is he right?

53 — It is frequent practice in clubs to raise a subscription among the members at the end of the year for the benefit of the servants. In a certain club a subscription list was hung in the hall in November, bearing the title "Servants' Fund," on which members wrote their names and the sum which they were prepared to contribute. A. wrote down his name for £2. Did he by so doing incur any liability, and if so to whom?

54 — In the year 1920, a terrible disaster occurred in the town of Alexandria—the municipal theatre was burnt down and a great number of people lost their lives. Immediately a public committee was formed to collect a fund for the relief of the sufferers. A large of sum money was collected and its distribution was proceeded with. Among other persons to receive grants was A., the widow of one of the victims. All grants made were acknowledged by a receipt, signed by the recipient, in which the

latter undertook to waive all claims against the municipality. In consideration of this provision being inserted in the receipts the municipality had made a handsome donation to the Committee.

In despite of her undertaking, A. sued the municipality for damages for the loss of her husband. Could the municipality invoke her waiver? (1) If the municipality lost the action, could it recover any part, and if so what part, of what it had contributed to the committee's funds?

55 — A. comes to you for advice in the following circumstances: He explains that he is a large cotton merchant and that he employs B. as his agent to purchase cotton for him in the country districts. Not long ago he (A.) discovered that a large purchase of cotton which B. had made from one C. had been facilitated by a present of £250 made by the latter to B.

In view of the price paid and the quality of the cotton, the bargain which B. had made for his master was at the time a particularly bad one, but since then the price of cotton has risen considerably, so that the cotton purchased could now have been sold at a handsome profit on the price paid. But three days ago the whole of it was unfortunately destroyed by fire in A.'s shuna. A. now wants to know: (1) whether he can have his contract with C. set aside; and (2) whether he can recover from B. the £250 paid to him.

Would the case be altered if the fire had been caused by the fault of A. or of his employés?

Supposing A. successful, could the insurance company which had ensured the cotton for A. be compelled to pay the insurance money, and if so, to whom?

56 — A., a learned professor of Arabic at a Dutch university, hears of the existence, in the collection of Sheikh B. at Cairo, of a unique Arabic manuscript, which he promptly decides, if possible, to edit and publish. He thereupon writes to B. asking for a loan of the MS. B. replies that it is entirely at A.'s disposition, but

(1) DALL., *Per*, 85. 1, 411.

that it cannot leave his library. A. is however at liberty to come when he likes and to spend all the time he wishes in B.'s library copying the document in question. A. replies thanking B. in warm terms and accepting his conditions. Having done so, he takes a year's leave on half pay from the university, surrenders the lease of his house on paying a forfeit, borrows £300 at 5%, travels to Cairo with his family, and hires an apartment there for the winter.

These preliminaries being concluded, he proceeds to open communication with B., and discovers to his dismay that in the interval B. has died, and that his estate has been divided. The house, the library and the precious transcript have come into the hands of his nephew, D. who refuses to respect the contract.

Can A. obtain: (1) specific relief or; (2) damages, and if the latter, in what measure?

Supposing that D. relents and that A. finishes his task, and publishes the MS., deriving considerable profits from the venture. Can D. claim any share in such profits?

What if for B. you substitute the Egyptian Government, the MS. being in the Khedivial library, A. finding on his arrival that the honour of editing the MS has already been assigned to one of the staff of that institution?

57 — A. being completely deaf offers his house for sale to B. for £1,000.

"I accept" replies B.

"I cannot hear your answer," says A.: "be so kind as to write it down on this piece of paper." B. thereupon writes "I answered 'I accept'; but on further reflection I have decided that I have no need of your house and do not wish to buy it."

Was there a binding contract? (1)

58 — A. writes to B. offering him his house for sale for £1,000. B. replies by return of post accepting the offer. While his letter

(1) Question propounded by Kant, Metaphysic of Law.

is on its way B. telegraphs to A. retracting his acceptance, and this telegram reaches A. an hour before the letter.

Can A. compel B. to fulfil the terms of his letter ?

59 — A. is a strict Muslim and a consistent abstainer from alcohol. One day he goes into a large hotel in Cairo, and orders himself a sumptuous lunch, with a bottle of lemonade. On calling for the bill he is surprised to find, in addition to ample charges for the things he had ordered, a charge of 10 P.T. for wine. On asking for an explanation, a printed note at the foot of the bill of fare is pointed out to him to the effect that " when no wine is ordered, an additional charge of 10 P.T. will be made." Can A. legally resist this charge ?

60 — A. telegraphs to B. offering to take a lease of certain three feddans belonging to B., for a term of three years, at an annual rent of £10 per feddan. B. wires in reply : " Accept your offer. Meet me in Cairo to-morrow to discuss conditions." A. keeps the appointment, but B. refuses to see him. A. then learns that B. is negociating a more advantageous lease with other parties. A. thereupon writes to B. saying. "I insist that the lease is complete in my favour. As for conditions, I accept any that you propose." B. then replies, "I deny that I am bound by my telegram, which was only an acceptance of a proposal to negociate. But to clinch the matter I propose as a condition that you shall be debarred from cultivating or exploiting the land in any manner during the term." A. then sues B. for delivery of the land, or in the alternative for damages for breach of contract. What judgment ?

61 — A. is the head doctor of a government hospital. In that capacity he makes a contract with B. for the supply of coals for a year to the hospital. The correspondence is filed, and the transaction is recorded in the books of the hospital. Immediately afterwards, the clerk of the hospital dies, and A. is transferred to another post. His successor C., being led to believe that X. is the regular coal-contractor, and being ignorant of the fact that the

coal supply for the ensuing year has been already provided for, gives X. an order for a year's supply of coal. Shortly afterwards the new clerk (having examined the books) discovers the record of the contract with B., and notifies C. thereof. C. thereupon writes to X. and informs him that the order was given in error, and must be regarded as null and void. X. protests, and claims compensation. Receiving no satisfaction, he sues the Government for breach of contract and claims £100 damages as the amount of his unrealised profits.

Does C.'s letter retracting the order amount by itself to a breach of contract? Can the Government be said to have acted in error? Must it not, as a Juristic Person, be held to be cognisant of the contents of its own records? If it is held to have contracted by mistake, is the mistake of a kind to invalidate the contract with X.?

62 — A., a foreigner living in Egypt, sues B., an Egyptian subject, on a written contract for the sale of a house, and sets forth the following circumstances: That A. and B. agreed verbally to the sale, and met on a subsequent day to sign the contract. The contract was prepared in French in two copies. B. signed both; but immediately before his signature on A.'s copy, he wrote in Arabic the words.—" I do not agree to the above."

A. asks leave to prove by witnesses and otherwise :—

(1) that he does not know Arabic ; and

(2) that B. by his conversation and behaviour at the signature of the contract had every appearance of assenting thereto.

He supports his demand by the assertion that it is always legitimate to prove " outre et contre le contenu d'un acte " when fraud is alleged.

B. replies that the latter principle, if true, is only applicable where it is sought to set aside an apparently valid contract. In this case the written contract is void on the face of it.

(Cf. Mixed Court decision on similar facts, B. L. J. VIII, 132).

§ 2. Cause and Object.

63 — A. was an enterprising tailor who, in order to push his trade, employed the following ingenious device. He sold, for 20

francs each, a limited number of tickets, each bearing five detachable coupons. On each ticket were printed the following stipulations: "The purchaser of this ticket is invited to find "purchasers for each of the attached coupons at 4 francs each. To "every purchaser of a coupon I will deliver a new ticket similar "to this, for 20 francs. When the five coupons are sold, and when "each purchaser of such coupons has purchased a new ticket, I will "make a free gift to the purchaser of the original ticket of a "complete suit of clothes, made to measure, and worth 100 francs. "Similarly for all tickets issued in pursuance of the provisions "herein stated. The purchaser of a ticket who is unable to dispose "of all his coupons to other persons, or whose coupons are not "converted into tickets by the purchaser, may make up the re-"quired number by himself purchasing tickets at 20 francs each. "No suit of clothes will be delivered on any ticket if the herein "contained conditions are not fulfilled within three months of "its issue."

B. bought one of these tickets from A.; and sold a coupon thereof to C. C., on the strength of the coupon, purchased a new ticket from A. for 20 francs, and proceeded to look out for purchasers for the coupons thereto attached. His efforts were fruitless, and three months passed without his selling a single coupon. C. then sued A. for restitution of the 20 francs paid to him, on the grounds (1) that the contract was a waging contract; and (2) in the alternative that it was without cause. Is his claim justified? (1)

64 — On April 1, 1900, A. (a banker) sells to B. (a Government servant) a Credit Foncier bond, No. 2,325, quoted that day at 270 francs, on the following terms:

The bond to be paid for by 24 monthly payments of 20 francs each; any delay in payment to have the effect of avoiding the sale, *ipso jure* and without '*mise en demeure*': and in such case A. not to be bound to restore that part of the price already paid. A. shall furthermore be entitled at any time until complete payment to pledge the bond to secure his own obligations. If the

(1) Cf. DALLOZ Per. 1900. 2. 239.

bond draws a prize, such prize shall remain A.'s property until complete payment of the price, and shall become his absolutely on the occurrence of any default in payment. In any case A. shall be entitled to take 10% of such prize before paying over the amount to B.

On May 5, 1900 A. borrows 200 francs from the Credit Lyonnais on the security of the bond. About the same time he sells to X. the 'chance' attached thereto of drawing a prize, for 5 P.T. X. immediately informs the Credit Lyonnais of the purchase.

On July 1 the bond in question draws a prize of 100,000 francs. B. forthwith notifies the Credit Foncier of his claim to this sum; but as he omits to mention the number of his bond, the Credit Foncier pays over the 100,000 francs to the holder.

Meanwhile on the 30th June A. has been declared a bankrupt.

The Credit Lyonnais, ignorant of A.'s bankruptcy, pays him the 100,000 francs.

On the other hand the monthly payment due by B. on June 1, was not paid by him until June 3.

B. claims that for several reasons, the contract of April 1, 1900 was void, and sues both the Credit Lyonnais and the Credit Foncier for 100,000 francs. X. makes the same claim against both these institutions. X. and B. both claim to be entitled to prove in A.'s bankruptcy for 100,000 francs.

It is unnecessary to add that the whole sum has disappeared. Who bears the loss? (1)

65 — A. leases to B. for a term of five years certain apparatus for playing "petits chevaux" and "roulette," intended for use in the gambling establishment kept by B.

B. goes bankrupt. A. revindicates the apparatus in question. The syndic denies his right to recover them. The owner of the house in which the gambling was carried on remains silent.

66 — A. spent an evening at play in the Casino of Marg. About ten o'clock he found he had lost all his money, and borrowed £20

(1) Cf. SIREY, 1894, 2, p. 272 (note by M. Tessier.)

from his friend B., which sum he proceeded to lose also, in B.'s presence. On B.'s subsequently requesting him to repay the sum, he refuses, while admitting all the above facts.

67 — A. is elected a member of the Cosmopolitan Club, which consists of 500 members, and which exists partly for social and dining purposes and partly for gambling. Various games of chance, such as "*baccarat*," "*petits chevaux*" and "*roulette*" are carried on in its rooms, and the rule is that the members receive only 60% of their winnings, the remainder being retained by the club for expenses, any surplus being divided among the members at the end of the year.

In the course of the first three weeks of his membership A. borrows £50 from the treasurer of the club, for purpose of play, in accordance with a practice prevailing in the club. The rule is that advances of this kind shall be settled at the beginning of every month. A. accordingly repays £40 of his loan, and then, a few days later, repents and sues the president and the five members of the committee for the recovery of that sum.

The defendants set up by way of defence (1) that they have no representative character and cannot be held to answer for the lialibities of the club; and (2) they rely upon art. 147 C. C. N.

What if the President sues A. in the name of the club, to recover the £50 borrowed by him?

68 — A. is the owner of a house, in which he keeps a very popular gaming establishment. The house next door belongs to B., who sells it to C. A., who has long desired to extend his premises, takes steps to exercice his right of preemption, and in order to obtain the funds necessary for this purpose and for the purpose of fitting up his proposed new rooms, enters into a contract of partnership with D., which contract is duly published. The preemption is completed without legal proceedings, and A. goes to considerable expense in making communications between the two houses and in beautifying the new apartments. C., the frustrated purchaser, then brings an action against A. to have the preemption declared void.

Supposing he is successful, what becomes of the partnership between A. and D ?

Must C. pay any indemnity to A. for the permanent improvements to B.'s house? If so, what is the measure thereof?

What would be the bearing on the case of the fact that A.'s gaming establishment is authorised by the police?

69 — B. borrowed £3 from A. A little later A. was convicted of theft and was sent to gaol for four months. While in prison he made the acquaintance of C., who was doing time for an assault. When the time came for C. to be liberated A. still had two months of imprisonment to undergo. He missed his tobacco and other little comforts and had no money. So he bethought him of the plan of making use of C. to procure him the necessary supplies. "Go to B.," he said "give him this paper (a request for repayment of the loan) get the money from him, and smuggle it into prison to me. You can keep 10% of it for your pains." C. cheerfully assented, went to see B. the day he was liberated, showed him A.'s request, received £3 and gave a receipt for it. On the way back to the prison he stopped at a café for a rest and a chat, fell to play, and lost the whole sum. A. waited in vain for the expected supplies. When he came out of prison he looked out for C., and when he found him demanded his money. C. made various dilatory excuses. A. then applied to B. who produced C.'s receipt and A.'s request.

A. sued B. and C. jointly for the sum of £3.

The Prison regulations, which have force of law, forbid the supply to prisoners of money or other objects.

B. well knew that A. was in prison, and that the money was to be smuggled in to him.

70 — To vary the previous case, suppose that B. was not already A.'s debtor, but paid the £3 to C. by way of loan, well knowing that the money was to be smuggled into prison for A.

Suppose now that A. sues C. for the sum, and loses his action on the ground that his mandate given to C. was illegal. Can B. recover his loan from either A. or C.? What if it had been tobacco

which B. had supplied to C., over a considerable period of time, C. having converted it all to his own private use, smoking it at home?

Would it make any difference if C., though knowing that A. was in prison, supposed that he was not yet convicted, and was therefore entitled to have comforts brought to him from outside?

71 — A. is a tailor, who has in stock a length of cloth, of a striking pattern, just sufficient to make a suit of clothes with two additional pairs of trousers. B. orders a suit and two extra pairs of trousers to be made of this stuff. A few days later A. delivers a complete suit, but without any additional trousers, explaining that a fire had broken out in his shop, and had injured the piece in question, so that the extra trousers could not be made. B. refuses to take delivery. A. then sues B. for the price of the suit, and produces in court a letter from the English manufacturer of the stuff saying that the pattern is exhausted, and that it would not be worth his while to make any more unless to meet an order for £200 worth at least. B. claims that he cannot be called upon to accept less than the goods he ordered, especially as a suit with only one pair of trousers is a highly extravagant investment, which no prudent man would make. Decision?

72 — A. is a minor, aged seventeen, under the guardianship of his mother. Being anxious to pursue his studies as an engineer at a European University, he borrows £1,000 from B., who takes in exchange a promissory note, payable at five years from date, and subscribed both by A. and by his maternal uncle, C.

Before the lad leaves for foreign parts B. sees a good deal of him, and forms so high an idea of his talents and prospects that he conceives the plan of making him his son-in-law. He says nothing of this idea at the time, but a few months after A.'s departure he writes to him and says "if you will marry my daughter I will give her a dowry of £10,000. Of course under these circumstances I should tear up your note." A. writes back an enthusiastic letter of thanks, and embraces the proposal *in toto*.

Three years pass by, and A. returns from abroad, a grown man, with a handsome diploma testifying to well-spent years of study—and with a wife. The latter is a French lady, whom A. has married in a Catholic church and before the *maire* of the XXXVth arrondissement of Paris.

When he is reminded of the proposed marriage with B.'s daughter he remarks with a show of decent regret that that is now obviously impossible (is this so?) B. is very angry and awaits with impatience the day for the note to fall due. When the day comes, A. is peremptorily called upon to pay.

With his usual coolness he replies in writing that he has no funds in hand at the moment; that he hopes to be able to pay something when business is better, and that meanwhile he begs to observe that he was under age when he signed the note in question.

B. promptly sues A. and C. on the note. C. says in his defence: (1) that since A. was a minor, and is not liable, and as he (C.) is in reality a surety, therefore he also is free from liability; and (2) that whether he be a surety or a solidary co-debtor, he is discharged by A.'s novation; and that when A. accepted the discharge conditional on his marrying B.'s daughter, this was equivalent to a novation.

All the parties are natives and Musulmans.

73 — C. was a carpenter, and possessed the secret of a rare branch of metal inlaid work, which is hardly known outside China. A. had a son B., whom he desired to have taught this art. He therefore entered into a contract with C., on 3 December 1892, to the effect that the latter should take B. as an apprentice for four years from 1 January 1893, for a fee of 10,000 P.T. payable in eight instalments of 1,250 P.T. six-monthly in advance. At this time B. was three months under eighteen years of age.

B. began to work in C.'s shop on the date agreed, and continued to work there until October of the same year. The two instalments of the fee were duly paid. In the middle of October C. began to suffer from an affection of the eyes, and in the course of a few weeks he became totally blind, which made him equally

unable to continue his work and his instruction of B. Meanwhile B. had learnt some of the rudiments of C.'s peculiar business, but had still the greater part to learn.

On 6 November 1893, A. died, leaving as heirs a widow, and an elder son, besides B., who was now emancipated.

Shortly after these events B. learns from a clerk in the employment of X., the furniture manufacturer, that on 15 November 1892 C. had made a contract with X. to enter the latter's service on 1 January 1894,—by which time some outstanding work would be completed,—for a term of five years, with a salary of 1,000 P.T. a month; and C. had further undertaken that from the date of the contract he would reveal his secrets to no one without X.'s permission.

B. now sues C. for 20,000 P.T., by way of damages for breach of contract.

Has B. a *prima facie* right of action, and if so how did he acquire it? Can C. avail himself of the defence of impossibility of performance? How is his position affected by his contract with X? Is he guilty of *dolus*? Is a fraudulent intention to break his contract with B. sufficiently established by the proof of his contract with X?

Is it A.'s or B.'s interest in performance which is the true measure of damages? If the latter's, how is it to be determined? By the whole amount he might have earned by knowing C.'s trade, or by the expense of going to China to learn it there, or by some more moderate standard? Ought the instalments already paid to C. to be restored?

74 — A. and B. enter into a contract which is illegal, under the law governing the contract, at the time of contracting. Before the time has arrived for performance, the law in question is repealed. Is the contract enforceable?

75 — A., a Cairene, has a claim against a person residing in Constantinople, and finds himself compelled to bring an action. With this object he enters into a written contract with B., a Constantinople lawyer, whereby the latter undertakes to prosecute his action,

and to accept in complete satisfaction of all claim for fees, 5% on the amount recovered. The action is brought, is successful, and A.'s adversary is ordered to pay £4,000. He at once acquiesces, and forwards a cheque to A. for the amount. A. refuses to pay B. the £200 to which he is entitled under the contract, and B. sues him for the amount before the Native Court at Cairo, pleading that the contract in question is in conformity with the custom of the Constantinople bar, as frequently affirmed by decisions of the courts of that city. What decision?

What if A. has paid the £200 to B., and claims to arrest that amount in the hands of C., a Cairo banker, and B.'s debtor, on the ground that he is entitled to its restitution?

76 — A. and B., native subjects, enter into a partnership together "en nom collectif" for the purpose of starting a business as pawnbrokers. As A. is a disbarred advocate and B. has formerly been convicted of forgery, they anticipate that it would be an idle formality to apply for an authorisation under the decree of 1900, and resolve to say nothing about the matter. The articles of partnership are however regularly published in the manner required by arts 48-51 Native Com. C. and arts 54-57 Mixed Com. C.

Immediately afterwards the partners hire, in the firm name, suitable premises from one C., and commence business. Clients flock to their doors, and their store house is promptly filled with watches, knives and forks, bed clothes, bicycles, title deeds, saddlery, weapons and other objects of value. In view of the risk of fire the firm very properly takes out, in the firm name, an ample insurance with the X. insurance company.

Then misfortune overtakes them, and misfortunes never come singly. The Government learns of the unauthorised business, and takes proceedings against the partners. While these are pendant, C. brings an action againt the firm to have the lease rescinded and for arrears of rent on the ground that their business is illicit; and before either action comes to final judgment, the premises are gutted by fire, the greater part of the pledges are destroyed, and the insurance company, being called upon to pay the amount of

the policy, refuses to do so. Last of all, A. and B. fall out between themselves, and A. brings an action against B. for the liquidation of the partnership, and for the payment of a sum of £150 which he alleges to be due to him on the account.

(1) In the action by the landlord, the partners allow judgment to go by default, but resist imminent execution by an incident in which they raise the objection that if their business is illicit, their partnership is non-existant, and an action cannot properly be brought against them in the firm name: and in the alternative, that the illicit character of the business is no concern of C.'s, as long as it does not damage his property.

(2) The insurance company resists payment on the grounds (*a*) that the firm which took out the insurance is non-existant; and (*b*) that the insurance had an illegal object.

(3) In the action between the partners B. also relies upon the illegality of their proceedings and the nullity of the partnership, and invokes the maxim *in pari causa turpitudinis melior est causa possidentis* (where both parties are equally blameworthy, the cause of the possessor triumphs.)

77 — A big review of troops was fixed for 1st June. A., a builder, erected a stand on ground belonging to him, to furnish accommodation for 2,000 sightseers, at a cost of £2,000. He sold altogether 1,500 tickets at £2 each. Among other purchasers was B., who bought 10 tickets on May 31 in the morning, and paid for them by cheque. On the evening of that day it was announced that the review would not take place. B. immediately stopped his cheque, payment of which was refused by his bank when presented on the following day by A. A. sues B. for the value of the cheque, £20. B. refuses payment on the ground that fulfilment of A.'s contract has become impossible. A. denies this; but in the alternative claims that B. shall support his share of the actual *expenses* incurred by A. $= £10 \times \frac{2000}{1500} = £13\frac{1}{3}$.

78 — A. contracted with B. to export for the latter certain horses from Syria to Egypt. Subsequently to the formation of the contract, a Turkish law was passed forbidding the export of

horses from Syria. Should B. be held excused by an Egyptian Court from performance of his contract on the ground (1) of illegality, (2) of impossibility? Would it make any difference if for Syria and Turkey we substituted Greece? Would it affect the decision in either case if it were shown that the law was not enforced, or that B. had made no attempt to evade it? If so, upon whom would the burden of proof lie?

Supposing A. has managed to evade the law in question, and has brought the horses to Egypt, can he compel B. to accept them and recover the contract price? Or, supposing B. has accepted the horses, and that, before payment, they have died of disease contracted without B.'s fault, is B. liable in any way? If B. has paid the money, can he recover it?

79 — A., aged 50, has a wealthy relative, aged 60, from whom he hopes to inherit, and whom he is particularly anxious to survive, in order that his own children may succeed to the share to which he himself would be entitled. As he is in a weak state of health he consults B., a doctor, who undertakes, for a substantial annual payment, to keep him alive longer than the relative in question. "You've got a bit of cough," says B., "but that's nothing; I'll see you through, never fear:"— and writes him a letter to that effect stipulating the aforesaid charges. A year or two passes, when A. falls seriously ill, and, in spite of the careful and conscientious treatment of his optimistic medical attendant, he dies some three weeks later. The wealthy relative attends the funeral in person.

A.'s heirs sue B. for breach of the contract, estimating the damages at the whole amount of which A. was deprived by not surviving his opulent relative.

80 — Can an unauthorised medical practitioner or midwife sue for fees for treatment? What if there is an express contract between the parties? Can such a person sue for the value of drugs or herbs prescribed and delivered? Is the fact that the patient was aware of the practitioner's lack of authorsiation relevant? What if the unauthorised practitioner is in fact employed by a Government department in a professional capacity?

§ 3. Capacity.

81 — Art. 2, of K.D. 17 February 1898 requires that the Cady or his representative shall take part in the sittings of Meglis Hasbys for the purpose of deciding upon the revocation of tutors.

A. was a minor. B. was his tutor. A.'s friends came to the conclusion that B. was acting dishonestly and procured his dismissal by a Meglis Hasby at the meeting of which the Cady was neither present nor represented. At the same meeting C. was appointed tutor.

Shortly afterwards A. inherited a share in a furniture business. The other heirs were of age. C. agreed with these latter that it was desirable to dispose of the business, which they accordingly proceeded to do, and sold the concern for a fair price to one X., a rival merchant. One of the terms of the contract was that X. should be liable for all the outstanding debts of the business — of which a list was made out — and should hold A. and his coheirs harmless against any actions brought by the creditors.

X. took possession of the business and proceeded to carry it on. One of his first acts was to circularise the creditors (who were mostly dealers in furniture and materials), informing them of his purchase, and of the fact that he had assumed liability for their debts. Among other persons so circularised was P., a furniture importer. P. made no reply, but supplied X. with goods on credit at his new premises — as he had for a long time past been in the habit of doing at his old premises.

A. then attained the age of 18 years, and immediately brought an action against X. for the rescission of the sale. Should he succeed? If so, what rights has P. against X. or A., if any?

82 — A. is a Belgian subject, who has been interdicted by a judgment of the Belgian Consular Court. He nevertheless obtains the adjudication to himself of a building, which is sold under an order of a native court (*licité*). As he fails to fulfil the conditions of the adjudication the building is resold at his risk and peril (*folle enchère*) for £100 less than he had bid. When A. is applied to to make good the difference and pay costs, he pleads incapacity. *Quid juris?* What if the interdiction was pronounced by a Belgian Court?

§ 4. Mistake.

83 — The celebrated musician A. B. has a brother of the same name as himself who is also a professional musician, but is entirely unappreciated by the public.

C., the manager of the Grand Theatre of Operatic Varieties in Cairo, hearing that the famous virtuoso is coming to spend the winter in Egypt, goes to the station to meet A. B. the Less. Mistaking him for his distinguished brother, C. offers the newly-arrived traveller the position of conductor of his orchestra for three months, at 2,000 francs a month, and presents him a written contract for his signature. This A. B. the Less signs with alacrity.

Having discovered his mistake, C. seeks to be relieved from his contract. Can he?

What if it can be proved that the A. B. in question knew quite well that C. was under a misapprehension although he said nothing to promote his mistake?

84 — A., a well-known dealer in works of art, purchases for 50,000 francs an authentic painting by the famous artist Rembrandt. He unpacks the picture, and places it provisionally on an easel in his show room which has on it a ticket with the words "XVIIIth century French School; 1,000 francs." In A.'s absence from his shop, B., a learned amateur, comes in, notices the picture, and asks the price. A clerk, looking at the ticket, replies "1,000 francs." This sum B. promptly pays, and takes away the prize.

Can A. have this sale set aside? Would the case be altered: (1) if B. had known the authorship and value of the picture? (2) if he had immediately resold it to X?

Making the same alternative suppositions as to B.'s knowledge, what solution if A. was ignorant of the authorship and value?

85 — The following episode was recorded in a recent issue of a French newspaper. "A Teniers for twenty francs."

Not long ago the property of the convent of English Benedictines was put up for sale by auction at Douai. Among other

things, a dusty little canvas was offered for sale, at a reserve price of one franc, and was knocked down for a napoleon.

On being washed, the canvas revealed a charming landscape, pronounced by connoisseurs to be an undoubted work of the painter David Teniers the Younger, and worthy of the finest collections.

Could this sale be set aside ?

86 — A. being at Tantah, and wishing to go to Dessouk, got into the through train to Cairo. He had not had time to get a ticket. By the time the ticket collector came round, he had discovered his mistake, and paid his fare to Cairo only under protest. Is he entitled to have the money so paid refunded ?

§ 5. Fraud.

87 — A. wishes to purchase the house of his neighbour B. and for a moderate price. As B. shows no disposition to sell his ancestral mansion for a moderate, or any price, A. conceives the plan of directing his servant to throw stones at B.'s windows every night after dark. The house soon gets the reputation of being haunted, the tenants one and all throw up their leases and leave, and B. himself, who occupies an apartment, is compelled to decamp, as his wife threatens to return to her mother if he does not.

In despair B. puts the house up for sale, and A., who has no rivals, easily purchases it at a derisory figure.

As soon as the contract is signed A. goes about publishing the story of his successful manœuvre, being moved not so much by vanity, as by the natural desire to restore the reputation of his house. B. sues him for rescission of the contract of sale.

88 — A. conceives a great desire to purchase B.'s horse, which B. absolutely refuses to sell. A.'s saïs, wishing to please his master, persuades B's saïs to induce in the latters' horse a temporary lameness. This manœuvre, of which A. is personally quite innocent, succeeds, and after a few days B. sells his horse to a

dealer, who in his turn resells it in a week's time, perfectly sound, to A., who acts to the last in perfect good faith.

Can B. revindicate the horse ?

Can he recover damages from A ?

89 — A. and B., landowners in the same village, both wish to buy a certain plot of land belonging to C. which is offered for sale.

In order to divert the attention — and the funds — of his rival, and so obtain C.'s land at a better price, A. invites B.'s attention to another piece of land belonging to D., situated at some distance, which is also for sale. In order to overcome B.'s hesitation between the two purchases, A. informs him that he has heard on good authority that the Government intends to build a railway line which will pass over the last-mentioned land. Not contented with assertions, A. takes B. one day to see the land, and there they find three gentlemen busily engaged in surveying operations. These persons (who are really A.'s accomplices) inform B. in confidence that the railway has been decided upon, and that they are making the preliminary survey. They add that there will be a station upon the land where they are, and point out to him the proposed position of the buffet.

B. is completely taken in, and buys the land, thus leaving A. without a serious competitor for the purchase of C.'s plot.

B. subsequently discovers that he has been deceived, and claims against D. the rescission of the sale.

(C. C. N. art. 136 ; C. C. M. art. 196 ; C. C. F. art. 1116).

He likewise claims damages as against A. Is he entitled to recover, and if so, in what measure ?

Are A.'s proceedings criminal ?

Would the case be the same had A. merely lied to B ?

VI. — SPECIFIC CONTRACTS

§ 1. Sale.

90 — A. sells land to B. with a stipulation that B. shall not sell it again without first offering it to A., or his heirs at the present price. Is this contract contrary to public policy? Does it bind B.'s syndic in bankruptcy? When is it prescribed?

Nine years after his purchase, B. sells the land to C., who purchases with knowledge of the aforesaid stipulation, but leaves B. in possession as lessee. Seven years later A. gets wind of the resale and sues B. and C. for the land, offering the original price. Can he recover the land, or damages against either defendant?

If A. has land separated from that sold by a public road, or a canal crossed by a bridge, can he claim that the stipulation creates a servitude?

91 — A., a jeweller, sells a pearl necklace, on credit, for a sum considerably above its market value, to B., who is a young man of large expectations, but whose immediate resources are fluctuating. A. takes the precaution of obtaining a written acknowledgment of his indebtedness from B.; he also retains the necklace in order to make a few minor alterations, promising to deliver it in a few days. The next day A., who is in need of money, sells the necklace to C., for a price intermediate between its market value and the sum promised by B., assigning to him at the same time the benefit of B.'s contract by a note on the back of the latter's acknowledgement signed by A. and C.

C. who is himself a jeweller, takes immediate possession of the necklace, and makes the required alterations in it. When they are finished, he himself calls upon B., and delivers the necklace to him, taking a receipt in the terms "received a necklace (described) from C."

Some time later, B. having come into money, C. sues him for the stipulated price of the pearls. B. has discovered that he is

being charged an excessive price, and consults a lawyer as to his defence.

The lawyer advises: (1) that C. became owner of the necklace, and therefore that the delivery thereof to B. was not a fulfilment of the sale A.—B. (art. 46, C. C. N.); (2) that in any case B. never assented to the assignment of the claim for the price. Is he right?

92 — A., a horse dealer, persuades B. to let him (A.) purchase a horse on his (B.'s) account, on the following terms, to which B. consents. Each party to provide half the total purchase money (£20): B. to keep the horse at A.'s stable, and use it. If at any time during ten days from the purchase B. is dissatisfied with the horse, A. is to relieve B. of his bargain and buy back the horse; if not B. is to become owner definitively. B. provides A. with the money stipulated, and the horse is purchased and brought to A.'s stable. Immediately after B. rides it for the first time it falls sick, and speedily dies, before the expiration of the ten days. B. seeks to to recover his £10 from A., who demands same amount from B.

93 — A. has a large ironmongers's business at Beni-Souef. He sells the stock and good will to B. for £200, and assigns to the latter the lease of his shop. By the same contract he undertakes to abstain from any sort of competition with B. in the ironmonger's business within the limits of Beni-Souef. Not long afterwards B. sold the business to C. Again later, A.'s son, D., opened an ironmonger's shop in Beni-Souef, and began to compete with C. D. lives with A. On these facts can C. sue D. for breach of the contract between A. and B.?

What if the contract contained no clause forbidding A. to compete?

(Cf. DALL. *Per.* 1900, 2. 476).

94 — On January 1, 1898, A. and B. make the following contract: "A. sells to B. his Cairo house with the adjoining land for the price of £1,000, which sum he hereby acknowledges to have been paid in cash. It is agreed that A. shall be entitled, at

any time within seven years from the present date, to recover his house and land hereby sold, on repaying to B. the said sum of £1,000, together with £10 for every month intervening from the present date to the date of such repurchase."

The house and the land are approximately equal in value.

On the day after the sale B. insures the house with the "Maternal Insurance Company" for a sum of £1,000.

On July 1, 1898 B. sells the said house and land to X. for £1,500, without giving him notice of the contract of January 1, which he pretends to have lost. X. pays £500 down, and agrees to pay another £500 on February 1, 1899. In order to procure this latter sum X. borrows £500 from P., the loan being secured by a hypothec on the house and land, registered on December 1, 1898.

In 1902 the house is burnt down, and A., X., and P. each claims the insurance money. In order to support his claim, A. asserts his right to redeem the house and land, and maintains that he is entitled to do so on restoring only the sum of £1,000, originally paid.

What are A.'s rights? Can he recover his house? On payment of what sum? To whom? To whom is the insurance money payable?

§ 2. Assignment of claims.

95 — A., B. and C. are joint and several debtors of X. X. assigns the debt to Y., obtaining A.'s consent. Thereafter B., who knows nothing of the matter pays the amount of the debt to X. and obtains a receipt. Y. subsequently sues B. and C. for debt. All parties are native subjects. Can Y. recover?

96 — A. is condemned by a competent court to pay a sum of £10 per month, alimentary pension, to his father B. B. borrows £100 from C., foreigner, to pay a doctor's bill, and to provide suitably for his daughter's marriage ceremony. To secure this loan he assigns to C. the benefit of his pension, to draw the same until he shall have encashed £150.

C. arrests A.'s salary of £E. 30 (which he receives as a Government official) for the sum of £E. 150.

A. contests the validity of this arrestment on the grounds:

(1) that the assignment B.—C. is wholly void;

(2) that in any case it can only be valid with his (A.'s) consent;

(3) that even admitting such an assignment to be possible without his consent, it can only be in favour of a creditor for necessaries supplied to the assignor, which is not the case here;

(4) that C. can only claim £100 and interest at the legal rate: and

(5) that he must make a fresh arrestment every month.

97 — A. lent a sum of money to B. In the contract A. described himself as an Egyptian subject, while B. described himself as under Austrian protection. A. subsequently assigns the claim to X., who sues B. before the Mixed Court. B. thereupon sets up the defence that he is an Egyptian subject. This defence being admitted, X. recommences his action before the Native Court, where B. raises the defence that he has not assented to the assignment of the claim. Is this admissible?

98 — A., being B.'s creditor for a sum of £50 assigns his claim to C. C., who is a friend of B.'s writes a letter to the latter releasing him from the debt. In these circumstances:

(1) B. never answers C.'s letter. Being sued by A. on the original debt, and producing C.'s release, he is met by the argument that the assignment never having been assented to by him, it is void, and that consequently C. has no power to release the debt.

(2) B. acknowledges C.'s letter, and thanks him for his generosity.

(*a*) verbally;

(*b*) by a letter which is lost or destroyed.

Is A.'s position, suing B., any different in these circumstances?

(*a*) Does A.'s right of action depend upon B.'s having consented to the assignment?

(*b*) Are his thanks to C. equivalent to such consent?

(*c*) In the absence of any existing written proof of these thanks, can B. call C. to testify orally thereto?

99 — A. (a native subject) has a tailoring business in Cairo. He sells it to B., with assignment to the latter of all outstanding claims against clients, on the terms that B. is to pay him a fixed sum monthly *out of the profits of the business* (i.e., so that if the profits are insufficient, B. incurs no personal liability to make up the deficit.)

C. is one of the debtors of the business and a native subject. B. sues him for clothes made by A. C. objects that he has not consented to the assignment. B. replies that the effect of his agreement with A. is to make him A.'s partner. C. answers that such a contract is leonine and therefore invalid. B. replicates that it is no concern of C.'s; and that even if B. is not entitled as partner, he is entitled as a simple mandatary. C. returns to the charge with the objection that in either case A. must be a party to the action.

100 — A. sells B. a house for £1,000, and obtains as surety for the payment of the price one C. B. failing to pay, A. enters into an agreement with C., whereby C. is to pay the price, and A. to transfer to him the "benefit of any rights A. may have against B." B. pays the price, and A. gives him a receipt with subrogation in the terms agreed upon.

C. then sues B. for rescission of the sale for non payment, and delivery of possession of the house, claiming to exercise the creditor's action, with all its accessory incidents.

B. replies that while C. is undoubtedly entitled to the benefit of A.'s securities, he is not entitled to exercise A.'s action, without an assignment to which B. has consented.

§ 3. Hire of things.

101 — A. purchases from B. a house in the Fagallah quarter for £1,000. The following day he makes with C. a contract of the following tenor:

"A. takes from C. a lease of a garden belonging to the latter and adjoining the former's recently purchased house, for an annual rent of £15 payable at the end of each Arabic year. A. and his

heirs and assigns shall be entitled to maintain the lease as long as they please on the sole condition of paying the agreed rent. C. stipulates on the other hand that A. and his successors shall not at any time in the future be entitled to sell the house without giving him eight days' notice of their intention, and affording him an opportunity of purchasing the house himself for the sum of £1,500."

Is this contract valid? If so, would A. have the right to have his lease set aside if it turned out that D. and not B. was the true owner of the house, and D. revindicated it from him?

102 — In 1900 A. took a lease of an apartment in X.'s house, the rent to be payable six-monthly in advance, and took the precaution of registering his contract. In 1901 X. sold his house to Y. Shortly after the sale the house was much injured by a fire, caused by lightning, and by the water with which the firemen freely drenched it. A., who had been obliged to seek lodgings elsewhere, thereupon applied to Y. (1) for therestitution of his last instalment of rent; (2) for the immediate repair of his apartment; and (3) for damages. These demands were made by formal summons (*exploit d'huissier*). Shortly after A. had taken this step, X. sued Y. for rescission of the sale of the house, on the ground of the non-payment of the price, and Y. allowed judgment to go by default. A. then followed up his claim against Y. by bringing an action. X. meanwhile was insolvent and had left the country. Can A. recover anything against Y., and if so, what?

103 — A. is lessee of two buildings situated on the same lot. One abuts on the road, and is used as a grocer's shop; the other stands back from the road in an enclosed space.

The first mentioned building is entirely destroyed by a fire of which it is impossible to ascertain the cause.

B., the lessor, sues A. for £100, the value which he attributes to the part of his immovable which has been destroyed.

A. makes a cross-claim, calling upon B. in the alternative either: (1) to put at his disposal premises equivalent to those

destroyed and to pay damages, for the interruption in the enjoyment of the lease ; or (2) to submit to the rescission of the lease (which has still two years to run) and to pay an indemnity for six months' loss of enjoyment.

104 — A. leases to B., who is a grocer, premises for a shop situated on the Place de l'Opéra at Cairo. The term of the lease is 10 years.

Six months later A. leases other premises, near the first, to C., who had been, up till that time, one of B.'s employés. A. knows that C. intends to use the premises as a grocer's shop, but is ignorant of his previous relations with B.

B. sues A. for damages in respect of this second lease, and claims the right to have C. prohibited from exercising the trade of a grocer in the premises in question.

105 — A. hypothecated a certain property to B., and the hypothec was registered on June 15, 1895. On November 3 of the same year A. gave a lease (with ascertained date) of the same property to C. for a period of three years, to run from December 1. In June 1896 A. and C. entered into a supplementary agreement (to which also legally ascertained date was given) whereby A. authorised C. to make some important improvements on the property, and undertook either : (1) to compensate C. therefore in cash at the termination of the lease, or (2) to permit the lease to run on for a second period on the terms that C. should apply the rent due from him to extinguish A.'s indebtedness for the improvements. On the termination of the first time of the lease, on November 30, 1897, the latter alternative was adopted.

Towards the beginning of 1899 B. took proceedings to enforce his hypothec, and transcribed his monition of execution [*commandement*] on February 3 of that year. He then claimed that C.'s rent was converted into immovable property and was covered by the hypothec as from the date of the latter transcription. This was contested by C. What decision ? (1)

(1) Cf. DALL. *Per.* 1900, 1, 577.

106 — A cholera epidemic breaks out in the town in which A. and B., two Mohammedan gentlemen, reside. A large part of the population seeks to escape ; the trains are crowded. A. takes five railway tickets entitling him to a whole compartment for himself. He takes possession of a compartment with two ladies of his family. B., arriving late, and finding the train absolutely crowded, except for A.'s compartment, forces his way in, in spite of the remonstrance of A. and the railway officials. A.'s female relatives consider themselves bound to withdraw, and the whole party is left behind. They are unable to obtain a train for another twenty-four hours, and suffer great distress of mind. A. sues the railway company for the price of his tickets, and for damages. The company calls B. to warranty.

107 — A. leased certain premises to B. for use in the business of a jeweller and pawnbroker. B. had had an authorisation to carry on business as a pawnbroker on other premises previously occupied by him from which he was moving but had at first no such authorisation in respect of the new premises. He nevertheless continued the business of a pawnbroker combined with that of a jeweller, for a few months without authorisation. He then took steps, which were successful, to obtain an authorisation. Before it was granted, A., having various reasons for desiring to put an end to the lease, brought an action against B. for that purpose, relying upon the arguments : (1) that the lease was void for illegality, and (2) that even if not, the temporary illegality of the use to which the premises were put was equivalent to misuse, and could not be covered by the lessor's express consent in the lease ; and that such consent must be taken as being conditional on an authorisation being obtained.

108 — A. takes a lease of an apartment from B., for three years at an annual rent of £100 payable six-monthly in advance. The contract contains, among other stipulations : (1) a clause requiring the lessee to have furniture in the house of a value sufficient to guarantee the rent for the whole period of the lease, and (2) a clause forbidding A. to sublet or assign the lease without B.'s written permission.

A. pays the first two instalments of rent in advance at the proper times. Immediately after the second payment B. ascertains that A. has put practically no furniture into the premises, and promptly serves him with a summons rescinding the lease, and calling upon him to give up possession. On A.'s refusal, the case comes before the court. A. objects that, so long as the rent is paid in advance, B. has no legitimate interest in enforcing clause 1.

Can B. rescind the lease on the ground of breach of clause 2. in any of the following circumstances?

i. A. takes a friend into the house with him, on the terms that they shall share the household expenses.

ii. A. lends the use of the apartment to a friend.

iii. A. assigns his lease to X. by a purely verbal agreement. In this case does it make any difference whether X. has actually taken possession?

iv. A. makes a written contract of sublease in favour of X., who does not take possession.

109 — One night at ten o'clock A., who is travelling on business, arrives at the door of the only inn boasted by the small town of P. and asks for accommodation. The landlord shows him a miserable little room and states that owing to the demands upon his space he is compelled to charge 200 P.T. a night. A. is overcome by astonishment, protests loudly, and finally leaves the hotel to seek shelter elsewhere. For an hour or more he searches in vain, and finally returns to the hotel heavy with sleep. The landlord B. has long been in bed. Without saying a word A. allows himself to be shown by a servant to the room which an hour or so previously he had indignantly refused. He spends the following day in attending to his business, and passes the second night at B.'s hotel. On awaking on the morning of the third day he discovers that his watch and travelling bag have disappeared. There is no means of discovering the thief. Realising that his visit has already been only too prolonged, and having important business in the capital, he wishes to take the morning train, which starts at 9 o'clock. B. thereupon hands him a bill for 550 P.T., including 400 P.T. for lodging and 150 P.T. for extras —

light, bath and service, — in accordance with a printed tariff posted in all the bedrooms of the inn. A. offers 40 P.T. a night, and claims £20 for the things which have been stolen. B. denies liability for the latter, and refuses to reduce his bill in any particular. Meanwhile the 9 o'clock train has gone, and A. finds himself obliged to wait twenty-four hours for another. B. refuses to allow him to take away his luggage on the following morning until he has paid his bill which now amounts to 800 P.T.

A. subsequently sues B. and claims:

(1) repayment of the 800 P.T.;

(2) £20 damages for the theft of the watch and the bag;

(3) 50,000 P.T. damages for the loss which he has suffered in not reaching the capital on the day he had intended. His delay, which was due, he says, to B.'s obstinacy, has caused him to be absent from a judicial auction of property which he would certainly have been able to purchase; (it was in fact knocked down to another person for a very low figure). He offers to prove that he had taken various necessary steps, such as depositing caution money, with a view to taking part in this auction.

In respect of the second head of claim, would the case be different if both A. were French subjects?

(Cf. Native C. C. art. 489; Mixed C. C. art. 598; French C. C. art. 1952).

110 — Is the lessee of agricultural land bound to pay rent for a year in which, owing to a low Nile, it has been impossible to irrigate the land?

111 — B. is A.'s lessee, under a lease from year to year, in which it is provided that notice to quit may be given by either party up to two months before the termination of any year. A. gives B. such notice; in spite of which B. continues in possession of the premises leased after the expiration of the term for which the notice was given. A. changes his mind; can he hold B. to the prolongation of the lease by tacit reconduction?

112 — A. grants a lease to B., by a contract having legally ascertained date. At the expiration of the term, the lease is

renewed by tacit reconduction. Thereafter A. sells the property leased to C. Is B.'s tenure valid as against C?

113 — A. leases certain agricultural land to B. for a term of three years, at a yearly rent of £20. A clause in the lease forbids B. to sub-let without A.'s written permission. B. employs certain persons, C. and D., to cultivate his land on the terms that they shall give him half the annual produce. Is A. entitled to claim the forfeiture of the lease? By what modes of proof may he establish the nature of the contract between B., C. and D?

Could A. sue C. and D. directly for the unpaid rent? If so, what is the extent of his right of recovery? B.'s liability to himself, or C.'s and D.'s to B.?

114 — A. lets a house to B. In the course of the term B. obtains A.'s permission to build several rooms on the top of the house.

(1) Can A., on the expiration of the lease, call upon B. to pull down the rooms in question and remove the materials at his own expense? Would it make any difference if B. had put up the rooms in question without A.'s permission? If so, how may A. prove that such building was authorised by him? On whom does the burden of proof lie? If it lies on B., has the maxim '*nemo auditur turpitudinem suam allegans*' any application to the case?

(2) If A. elects to retain the buildings, is B. entitled to any indemnity?

115 — A. leased a house to B. for three years. The date of the contract was not legally ascertained. Subsequently A. sold the property to X. Can B. thereupon repudiate his contract under Nat. C. C. art. 389?

In the above circumstances X. elects to maintain the lease to B., and calls upon the latter to pay the rent to himself. Can B. resist payment under art. 349? What if B. has made several payments to X?

116 — A. is a minor, and B. is his tutor, appointed by the Cady in the Meglis Hasby. A. passes the age of 18, but B.

continues (unauthorised) to administer his property. Among other things, B. leases a house belonging to A. to C., and receives the rent. The house is destroyed by fire, and A., having now assumed the control of his affairs, sues C. for damages, and claims to be dispensed from proving C.'s fault. C. replies : (1) that the lease being void, he must be treated as a trespasser in good faith, and his fault proved ; (2) that such proof is required even if his lease is valid.

116 *a* — A. grants a lease of a certain house to B. for a term of three years. Among the clauses in the contract is one whereby A. gives B. the option of purchasing the house at any time during the term at a determinate price. B. falls into arrears in the payment of rent, and the lease is rescinded at the suit of A. Does the option fall to the ground with the lease?

§ 4. Hire of Services.

117 — A. enters into a contract with B. whereby he appoints the latter to act as his agent to buy cotton, for the term of one year at a fixed monthly salary. When about four months of the year have elapsed A. receives information which decides him to remove B. from his position, and he sends a telegram to B. informing him that he is dismissed. B. happens to be engaged at that very time in negotiating an important purchase from C. B. shows C. A.'s telegram, and protesting that A. has no right to dismiss him till the end of the year, concludes the contract. Is A. bound thereby? Is C? Would it make any difference if, in an action between B. and A., it has been held that the latter had no right to dismiss B., and must pay him the stipulated salary until the end of the year?

118 — A. engages a cook at 300 P.T. a month, payable at the end of the month. The cook leaves A.'s service at the end of 15 days without notice ; is he entitled to any part of his wages? Is A. entitled to dispense with the cook's services at the end of the month without notice or indemnity?

119 — A., a doctor, entered into the private service of B., a wealthy pasha, and travelled with him wherever he went. He was employed at a good salary payable six-monthly in advance, under a contract of service of indeterminate duration. While the two were in a foreign country together, B. died, and A., thinking to anticipate the wishes of the family, with whom it was impossible to communicate by telegraph, embalmed the body and brought it back to Egypt at considerable expense. On A.'s claiming payment of his expenses from the heirs, they refused on the ground that his service was terminated by B.'s death, and that A.'s proceeding cannot be regarded as valid *negotiorum gestio*. A. sues them for £100 fee for embalming the body, and £200 expenses of bringing it home. Would it make any difference to A.'s action if he was able to produce a written document, signed and dated by B., but addressed to no one, expressing his wish that his body be embalmed and brought home, in case he should die abroad?

120 — A. has a servant X., who falls ill. A. on his own initiative sends for a doctor, and pays his bill as well as that of the chemist. X. is cured. He subsequently leaves A.'s service, and A. substracts the amount of the above payments from X.'s wages. Is he entitled to do so? Is his position altered if he has, in the interval between making the said payments and the last time for payment before X.'s departure paid X. his wages in full?

121 — A. contracts with B., a builder, to put up a house on A.'s land according to certain plans. B. stipulates in the contract that his liability for the permanence of the building shall be terminated after two years from its completion, and shall only arise in the case of gross fault. B. employs a sub-contractor, C., to put in the foundations by a patent system, for a fixed sum. This piece of work is disgracefully scamped, without B.'s knowledge. Six months after the completion of the building, A. sells the house to D. Two years later the house begins to threaten to fall down as a consequence of the defective state of the foundation.

A. is insolvent. D. sues A. and B. jointly, asking that they be

ordered to put the house in a satisfactory state of repair. Besides other defences sufficiently indicated above, B. objects that he has not assented to the assignment of his liability, which existed originally in favour of A.

(Cf. art. 409. Nat. C.C., art. 500 Mixed C.C.

§ 5. Carriage.

122 — A. purchases a book of twenty tickets on the tramway. Does this give him a right to a place on a crowded tram in preference to persons who are not abonnés ?

123 — A. purchases a ticket for a voyage from London to Alexandria on the P. and O. steamship *Poseidon*. On the back of the ticket is printed an extract from the regulations of the Company's passenger service providing that the company shall not be liable for any loss or damage happening to passengers' baggage, from any cause whatever, if they are uninsured.

A.'s baggage having disappeared on the journey, he sues the company before the Mixed Court. The company sets up a defence based on the above recited clause. A. replies by referring to arts 97 and 102 Mixed Com. C.

What if the baggage had been taken on board at Marseilles ?

124 — A., a Cairo merchant, sues the Egyptian Government before the Commercial Chamber of the Mixed Court for damages for the breakage of a case of porcelain vases consigned to A., during its carriage by custom house employés from the steamer to the custom house.

The Government denies the jurisdiction of the Court. (1)

125 — A., a Cairo merchant, takes delivery at the Cairo station of a case of indigo consigned to him by the firm of B. at Marseilles and cleared at Alexandria by C., a transport agent.

(1) Cf. Alex. 12 May 1886, Borelli, p. 203, No. 21 ; 4 Jan. 88 ; R.O. XIII. p. 53.

On opening the case A. discovers that it contains an upper layer of indigo, but that underneath there is nothing but fine coal. Has he any recourse, and if so, on what conditions and against whom? Upon whom does the burden of proof lie?

126 — A., who is the solitary occupant of a compartment in the express from Cairo to Alexandria, falls out of the carriage while the train is travelling at 60 kilometres an hour and is killed. It is impossible to discover whether, owing to the fault of the railway officials, the door was left imperfectly closed, or whether A. himself opened it.

Is the railway company liable to A.'s heirs? What if the railway company is able to prove that the door of A.'s compartment was carefully closed at the last station at which the train stopped? What if it is proved that A. was very drunk when he got into the train at Alexandria?

127 — Aly, the owner of a large shop at Damietta, writes to Constantine, commission agent at Port Said, to the following effect:—

"Kindly send at earliest convenience an assortment of fancy goods of the usual kind."

Constantine forwards this order to Alexander, another commission agent at Port Said, who purchases goods in accordance therewith from Boutros, an importer of drapery, and delivers them to Constantine. Constantine forwards the assortment to Damietta by sea. On the voyage the brigantine on which the goods were embarked founders in a gale.

To whom must Boutros look for payment? By what means can he prove the nature and price of the goods sold? Supposing him to have been paid by Constantine or Alexander, have either of the latter any right of recourse?

Supposing that X. insured the shipment, to whom is the insurance money payable?

Supposing that the cargo consigned to Damietta and insured by X. consisted of coal; that it was insured for £1,200; that at the time of the sale similar coal was worth £1,300; at the time the

contract of insurance was completed, £1,200; at the time of the shipwreck, £1,000; and on the date on which an action relating to the matter was introduced, £900. How much can be recovered from the company, and by whom?

128 — A. gets into a tram in Cairo. Before the conductor has come round to sell him a ticket, the car, being rashly driven, collides with a steam roller, and A. is injured. He sues the company, which raises the defence that A. not having taken his ticket, had made no contract with the company, which is therefore under no liability to him for careful conveyance.

Supposing that A. asserts that in fact he had bought a ticket, upon whom does the burden of proof lie?

§ 6. Partnerships & Companies.

129 — A. was the managing director of a commercial company which decided to issue a number of debentures. A. being on the verge of insolvency purchased a large block of these debentures himself, and concealed them. Have his creditors any remedy against the company?

130 — On January 1, 1901, A., a landowner, makes the following verbal contract with X., a grocer:—A. agrees to pay X. £50 down, and another like sum at such time, within five years, as the *two parties shall fix by common agreement.* X. agrees to use these sums in his business, and to pay to A. on the 1st of January in every year a sum of 600 P.T. together with 35% of his net profits; he further agrees to repay the first contribution of £50, together with any further sum received, on January 1, 1906.

Fifteen months later X., having suffered losses in his business, and being £150 to the bad, calls upon A. to make the further advance of £50, as promised, and supports his claim by the argument that the contract made on January 1, 1901 was a void contract of partnership.

What if X. has been declared a bankrupt, and A. claims the right to prove in the bankruptcy as a creditor for £50? How may

he prove that he made this loan? What if the syndics not only reject this claim, but call upon A. to contribute the further sum of £50 towards making good the deficit? By what means can the syndics prove the contract of January 1, 1901? Can they rely upon an entry in X.'s day-book under the date January 1, 1902 "encashed £50 on account of the £100 which A. agreed, in our conversation of to-day's date, to advance"?

131 — A., who is a Cairo doctor of foreign nationality, purchases at various times 1,000 Suez Canal shares through the firm of brokers B., C., & Co. The purchases are "à terme." At the conclusion of these transactions A. is indebted to the above mentioned firm in the sum of £100, being the unsatisfied balance of his differences, which amounted to £200.

Being sued before the Commercial Chamber of the Mixed Court, A. pleads to the jurisdiction.

The question of jurisdiction being disposed of, suppose that A. sets up against B., C. & Co. a cross-claim for £100, voluntarily paid by him to the partnership, claiming restitution of this sum on the ground that the partnership has not been made public in the manner required by the Commercial Code, and that this irregularity involves its nullity as regards third parties and for their benefit.

Suppose furthermore that A. sets up, as against the claim of £100, the defence that it is based upon a waging contract.

132 — A. and B. are partners under a contract of partnership entered into by them with a view both to purchasing land for resale on credit, and to lending money on hypothecary security. The partnership contract has been registered but has not otherwise been made public.

C., who is A.'s personal creditor for a sum of £1,000, obtains judgment against him and claims the right to register a judgment charge on lands belonging to the partnership situated in the Abdin quarter. Can he do so? (1)

(1) Cf. Cass. 23 February 1902. DALLOZ Per. 1902, 1. 65.

133 — A. and Co. is a "commandite" company, the capital of which is £100,000 divided into 25,000 shares of £4 each. The company was founded in the year 1900, and it was provided that £1 per share should be payable on allotment, £1 six months later, and £1 on April 1, 1902.

On January 1, 1902 the company deposited its balance sheet. Thereupon, in the course of February, X., who is a creditor of the company for £3,000, sues B., a holder of 4,000 shares upon which £2 each has been paid, to obtain payment of the unpaid moiety of the price of the shares. B. raises the following defences:

(1) He obtained his shares by assignment from Y., who himself obtained them by assignment from Z., the original subscriber:

(2) Even if he be subject to a certain liability, it is only in the action *pro socio*, which X. cannot exercise against him;

(3) The company itself owes him £8,500 for goods delivered, so that he is the creditor of the company and not its debtor;

(4) In any case he is covered by art. 50 Mixed Com. C.

If B.s' defences, or any of them, are valid, for what amount can he rank in the bankruptcy of the company?

If they are all to be rejected, has he any recourse against Y. or Z? If so, who has ultimately to bear the burden of X.'s claim?

134 — The constitution of the "Egyptian Irrigation Company" was authorised by a decree of the Egyptian Government on April 1, 1901.

Under the statutes so approved the capital of the company was to be £100,000, divided into 100,000 shares of £1 each, of which 4 s. was to be payable on allotment and the remainder in three instalments at intervals of three months.

The company was formed for the purpose of irrigating and developing certain hitherto incultivated lands, of which a portion had been conceded by the Government, to A. and B., founders of the company. In accordance with the provisions of the statutes A. and B. received, in consideration for their contribution of the lands so conceded, £2,000 in cash and 2,000 shares. With regard to the latter it was provided that they should not become transferable until after five years from the formation of the company;

and that until that time they should remain in the custody of the company, the rights of A. and B. being confined to the proceeds of the coupons.

Very shortly after its formation the company suffered heavy losses—its principal factory was burnt down uninsured and a part of its land was carried away by the river. Thereupon X., the holder of 4,000 shares which he had purchased from one of the original subscribers, and who has been called upon for the payment of the third instalment of the capital, (namely 4 s. per share,) refuses payment of the call and relies for defence upon the nullity of the company, quoting in support of his defence art. 49 Mixed Com. C. Is this defence good?

Supposing it be adjudged that the constitution of the company is void:

(1) Can A. and B. claim to rank in the winding-up on the basis of their 2,000 shares?

(2) Can they retain the £2,000 which they received under the provisions of statutes?

(3) Can the Government be held liable for th consequences of the nullity of the company?

135 — A. is limited partner (*commanditaire*) in the cotton-broking partnership of X. and Co., which was founded in the year 1900. In the course of 1901 A., who still owes the partnership the whole amount of his stipulated contribution to the capital, namely £1,000, sells to the partnership his cotton crop for the sum of £1,200. Of this latter sum he only receives £200. In 1902 the partnership fails, and the syndic calls upon A. to pay his contribution of £1,000. A. raises the defence of compensation.

136 — A. and B. were partners, and owned a certain immovable as part of the partnership property. During the existence of the partnership A. hypothecated this immovable for a private debt of £500 owed to C. Later on proceedings were taken by B. for the dissolution of the partnership, the liquidation of the accounts between the partners, and the partition of the partnership property. It appeared that A. owed B. a sum of £700. Licitation

proceedings were taken with regard to the hypothecated immovable, and it was sold to one X. for £1,000. Is C. entitled to a preference over the price for the amount of his hypothec? (1)

137 — X. is the name of a company which has been created with a view to carrying on mining operations in a certain district, and which has obtained from the Government an exclusive concession to that effect. It opens a shop for the sale to its employés of food, clothes, etc., at cost price, no authority to do so being conferred either by its statutes or by its concession. Is it open to an action for illegal competition on the part of B., a Greek dealer, who has previously opened an establishment near the mines for the sale of goods of the same kind? Would it affect the case if B.'s shop was opened after that of the Company? Would it affect the case if the scene of the company's operations was near a large town, and the shop opened by it was patronised by the inhabitants? What if the company's shop was only open to its employés and if their purchases were credited to their weekly wages (2)?

§ 7. Loan.

138 — A., a banker, makes a written contract with B., who is a private person about to build a house, to open a credit for him of 100,000 P.T. Some time later B. goes personally to the bank. and applies for 10,000 P.T. The cashier refuses to honour B.'s draft.

B. sues A. for breach of contract. A. replies that the mere contract "to lend" is not a binding one, since the law only recognises the contract of loan as a "real contract," which is not formed until the loan has been actually made.

139 — A. and B. make a contract to the following effect. On the 1st January A. is to deliver to B. 10 kantars of cotton. On July 1, B. is to restore to A. 15 kantars of cotton, and in case of default he is to pay 5,000 P.T.

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(1) Cf. Dalloz Per. 1900, 2. 49:—Planiol, III, § 2401.
(2) Cf. Dalloz Per. 1900. 2. 484 and note.

The 10 kantars of cotton are delivered by A. as agreed on January 1 ; but B. fails to restore 15 kantars on July 1. On July 15th A. summons him to deliver the same or to pay the penal sum. B. still failing to deliver or pay, A. on August 1, sues him for the 5,000 P.T.

On January 1 the market price of cotton per kantar was 250 P.T. On July 1 it was 200 P.T.

B. defends the action on the ground :—

(1) that the agreement to return 15 kantars for 10 kantars received is a usurious contract, contrary to art. 478; and

(2) that the stipulation of 5,000 P.T. was a penal clause, which was invalidated by the invalidity of the final agreement ; and

(3) that in consequence he is only bound to restore 10 kantars; and (perhaps) 5% interest on the value of the cotton on January 1.

A. replies :—

(1) that the obligation is an ordinary alternative obligation, with option reserved to himself ; and that consequently the invalidity (if any) of one alternative leaves the other enforcible (arg. from art. 97) ;

(2) More particularly, that the obligation he is now seeking to enforce is a conditional contract of sale ;

(3) That neither the obligation to return 15 kantars, nor the alternative obligation to pay 5,000 P.T. are governed by art. 478, which only relates to a payment of *interest in money* for a *loan of money*, and is a mistake (cf. corresponding art. of Mixed Code); it is not intended to apply to other cases than those governed by art. 125 Native C. C.

The rules governing the maximum rate of conventional interest are inapplicable to the case where goods are to be returned for goods ; since the law is concerned with the *value* of what is given and returned, not with its mere *quantity* ; and the value of what is to be returned cannot in such a case be estimated at the time the contract is formulated ; and every contract must be either valid or invalid *ab initio*.

As for the alternative obligation to pay a sum of money it is, as contended above, a simple conditional sale. Furthermore, there can be no question of usurious interest when only one payment is

stipulated for; since the question whether or no a simple payment constitutes usurious interest depends on the time when the creditor actually exacts payment—if he gives the debtor long grace, the effective rate of interest will be indefinitely reduced.

§ 8. Deposit.

140 — A. is a bookseller, and is in the habit of sending books to his customers for their inspection, in order to induce them to purchase. He sends a valuable illustrated work in this manner to the house of B. The same evening a fire breaks out in B.'s house and the book is destroyed. Is B. responsible for its value? Would it make any difference whether or no the fire could be attributed to the fault or negligence of B. or his servants? What if the book were accidentally injured by a friend who was visiting B.: (1) at the latter's invitation; (2) without invitation? Would it make any difference if B. (who lives in the same town as A.) had already kept the book in his house for three weeks at the time of its destruction? In this case is it of importance whether B. is an old customer of A.'s, and if so whether A. is in the habit of sending to take away books which B. does not wish to keep?

141 — A. before going on a journey deposits a sum of £10 in gold with his friend B. Is B. entitled to make use of this money in his own affairs? Does it make any difference if B. is (1) a banker; (2) a money changer, or (3) a merchant of any kind? Does it make any difference if the money is in a locked box, which B. finds he can open with a key of his own? What if the deposit is: (1) in bank notes; (2) in bills or notes endorsed in blank which mature before A. returns to claim his deposit? In the latter case is B. not merely entitled, but bound, to present the notes for payment, to protest them if unpaid, and to take necessary proceedings for recovering their amount from the drawee and previous endorsers? Does B.'s profession make any difference to his duty in this respect?

B. becomes insolvent before the deposit is claimed. Has A. any

preference over B.'s other creditors in each of the above cases? Does it make any difference whether in fact B. has kept the specie or paper deposited separate or has mingled them with his own funds? What if he has paid them into the X. bank, to an account entitled "A.'s deposit"?

A. assigns the benefit of his claim against B. to C. C. sues B. thereon, and the latter invokes the defence furnished by art. 349 of the Civil Code, which requires the consent of the debtor as a condition for the validity of the sale of a claim. In which of the above cases, if any, is B.'s defence justifiable? Does it make any difference whether A.'s assignment is by way of sale, gift, *datio in solutum* or compromise?

142 — Merchandise brought into Egypt has to be "cleared" at the custom house at the instance of the consignee. All merchandise discharged in an Egyptian port is carried by custom house employés into the local customs warehouse, where it lies while the formalities of clearing are proceeded with. The length of time which these formalities take depends chiefly upon the diligence of the consignee's agents: it cannot however be less than twenty-four hours, and may be prolonged by disputes as to the value of the merchandise or by the necessity for detailed examination of suspicious consignments. After clearance the custom house keeps merchandise at the disposition of the consignees. During the first eight days it makes no charge for warehousing; after the elapse of that time it charges at a very high rate.

In the absence of special legislation what solutions are called for to the following questions?

Are the consignees entitled to indemnity if merchandise is destroyed by fire or stolen during: (1) the first twenty-four hours; (2) during a subsequent period, before clearance, due to delay on the part of the consignees; (3) during a subsequent period before clearance, the delay being due to an erroneous estimate of the value of the merchandise on the part of the customs authorities, or to unfounded suspicions of contraband; (4) during the first eight days after clearance; (5) after the elapse of the first eight days.

Will the right of the parties be affected in any of these cases by the presence or absence of negligence on the part of the customs employes? Upon whom does the burden of proof lie with regard to the presence of negligence?

Have the customs authorities a right of retention over the merchandise in their warehouse to secure the warehousing fees? In the case where these fees amount to a sum superior to the value of the merchandise, have the customs authorities any right of action: (1) against the consignee; (2) against the consignor?

143 — A. is the owner of a hotel patronised by a numerous and wealthy *clientèle*. At the request of a local benevolent society, he permits a money-box, bearing the inscription "For the Poor" to be fixed to the wall in the entrance of the hotel. The box, which is opened every few months, brings in hundreds of pounds a year. A. goes bankrupt, and his creditors claim in the alternative: (1) that the whole amount in the box belongs to them; and (2) that the benevolent society is entitled merely to a dividend. Does it make any difference whether or no the benevolent society is incorporated, and whether or no A. has the key of the box?

144 — A. who is a French tourist, takes a railway ticket to Assouan, and a ticket for the sleeping car on the journey. While asleep in the carriage his watch and his pocket book are stolen from him.

A. sues the Sleeping Car Company (which is a French company) before the Commercial Chamber of the Cairo Mixed Court, claiming:—

(1) The sum of money contained in his pocket-book and the value of the watch;

(2) damages measured

(a) by the expense to which he was put being compelled to remain for a month at Assouan (where he had intended to pass three days only) while waiting for a remittance;

(b) by the average profits of his profession (that of a lawyer) during the three weeks of enforced prolongation of his absence from home.

The company defends the suit on the following grounds :—

(*a*) the want of jurisdiction of the court, both parties being French subjects ;

(*b*) the non-commercial character of the action ;

(*c*) the inapplicability of art. 598 Mixed C. C.

It also offers to prove that the theft was committed while the train was standing in a station, by a person or persons on the platform, who put their hands through the window of the carriage. Finally the company denies the propriety of including the heading 2 (*b*) in the measure of damages.

(Cf. art. 489 Nat. C. C., art. 598 Mixed C.C., art. 1952 Fr. C.C., art. 97 Nat. Com. C. and 102 Mixed Com. C).

§ 9. Mandate.

145 — A., the manager of the Daireh of B. Pacha, is dismissed by his employer. The day after his dismissal and when he has already handed over the business of the office, he meets D., a cotton merchant, with whom he is in the habit of doing business for B., and, hoping to regain the favour of B., he sells him the whole of B.'s cotton crop, at the advantageous price of 15 dollars a cantar. A. does not inform D. that he has ceased to be B.'s manager.

Shortly afterwards the price of cotton falls, and B. makes a formal demand upon D. calling upon him to take delivery of the cotton sold by A. D. refuses on the ground that at the time of the contract A. had no authority to represent B.

146 — A. writes from Constantinople to B. at Cairo, asking him to buy certain agricultural machinery on his account and to transport it to his country estate. The letter arrived on June 8th. B. made the desired purchases on June 15, and delivered the machinery at A.'s country place on June 25, expending altogether £87. Meanwhile A. had died at Beyrout on June 14th, but the news did not reach B. till June 28th. Has B. any right of recovery against A.'s heirs?

§ 10. Insurance.

147 — A. takes out a policy of insurance on his life for £1,000, from the Anglo-Egyptian Insurance Company, the annual premium being £20. This premium A. pays regularly for five years, at the end of which time he receives with surprise an announcement from the company that it has been decided that in future no policies shall be either issued *or paid* for a sum exceeding £500, and that in future he will only be called upon to pay an annual premium of £10.

Has A. any remedy, and if so, what is the nature or measure thereof?

What if A.'s policy was a fire policy on his house?

148 — A., a wealthy Copt, marries B. a member of the same community, and has by her two children C. and D.

Shortly after the birth of D., A. takes out an insurance policy on his life from the American company, the "Universal Security Company." The policy is stipulated to be payable on his death to his wife B. and her surviving children. On the same day B. takes out a similar policy, differing from the former only in that the name of A. is substituted for that of B.

Three years later A. turns Mohammedan, divorces B., and marries E.

On the following day B., in a fit of despair, takes poison and dies. A. dies three months after his unfortunate victim, leaving his wife E. with child.

The premiums of the two policies have always been punctually paid. To whom must the "Universal Security Company" pay the policies? What court has jurisdiction to try the matter?

(Assume, if necessary, that the Coptic personal statute is the same as the Mohammedan except on marriage questions).

149 — A. insures his house in 1895 for £1,000 for a period of five years with the "Maternal Insurance Company." In 1896 he borrows £700 from B., the loan to be repaid in ten years' time,

and gives him a first hypothec on the house. The official instrument recording the loan contains the following clause: "if the property hypothecated is destroyed by fire, A. will subrogate B. to his right to insurance money, in so far as such subrogation is necessary for the security of B.'s debt."

The house is burnt down in 1897. B. thereupon arrests the insurance money in the hands of the company, and claims to be entitled to immediate payment of his debt, together with accrued interest. A.'s other creditors object that B. has no prior claim upon the insurance money, and that in any case he is not entitled to payment before the maturity of his debt. In the event of its being held that the above recited clause in his contract with A. is valid, they assert that he is only entitled to take measures of conservation.

§ 11. Miscellaneous Contracts.

150 — A. owns an island in the middle of the river. He makes a contract with B., the owner of land on the neighbouring bank, in the following terms: "It is agreed that for an annual payment of 200 P.T., A. shall be entitled, for a period of 12 years, to land at the stone landing-stage standing at such and such a point on B.'s land." For three years A. pays the annual sum reserved, and uses the landing-stage as agreed. In the course of the fourth year a violent flood carries away a broad strip of B.'s land, and with it the landing-stage. When the flood subsides, B. causes the landing-stage to be rebuilt, but refuses to allow A. to use the new one as he used the old, on the ground that their contract has been extinguished by the disappearance of its object. A. sues B. for the recognition of his right and for damages.

What is the nature of A.'s right? Supposing he be entitled to judgment, should it grant him specific relief, or damages, or what?

151 — On April 1, 1890 A. and B. make a contract in writing in the following terms:

"A. sells B. his house being number 1, 611 Darb el-Gamamiz, "subject to all the legal warranties, for the price of £500 which "sum B. promises to pay before the 15th April.

"Dated 1 April 1890. "Seals."

On the same sheet of paper and immediately below the seals above mentioned the following additional matter appeared, bearing the same date and seals :

" It is agreed between the parties to the above contract that A. " releases B. absolutely from his liability to pay the price stipu- " lated above. "

In 1902 X., a wealthy collector of monuments of Eastern art, happens to notice the beauty of the mushrabiyeh in the house to which the foregoing agreements related (now occupied by B.) and offers the latter *in writing* £1,200 for the whole of the artistic woodwork therein.

B.. although astonished at the munificence of X.'s offer, stands out for £2,000. X. repeats his offer several times. In the course of the negotiations the house suddenly falls down, several persons including B.'s wife and two children and Y., a passer by, are killed, and almost the whole of the precious woodwork is destroyed.

An administrative inquiry into the cause of the collapse of the house reveals that it was due to a concealed defect in the foundations, which has made its ruin imminent at any time since 1890.

Y.'s heirs sue A. and B. for damages.

B. sues A. for :

(1) £2,000 the value of the house, including the woodwork ;

(2) £7,000 damages for the death of his wife and children.

A. replies :

(1) That the contract of April 1, 1890 is void ;

(2) That even if valid, it does not support an action on a warranty ;

(3) That such an action, had it ever existed, is now prescribed ;

(4) That in any case it cannot extend to the damages consisting in the loss of life of relatives, or the destruction of artistic woodwork.

Would the case be different if the sale had taken place in 1886?

152 — A. was the owner and manager of the Grand Hotel d'Albion. After forty years of successful business, he retired in 1899 with a comfortable fortune, leaving as his successor his former secretary X., with whom he made a contract to the following effect :

X. to give all his energies to the management of the hotel, the profits being distributed as follows : — X. to take £300 a year from the gross takings in any case, even should the net profits not reach that figure. The next charge on the net profits to be an annuity for A. of £400 a year. The profits remaining after deduction of these two sums to be equally divided between A. and X.

In 1900, — that is to say, less than a year from the execution of the agreement above recited — X. was declared a bankrupt. A. takes steps to exercise the lessor's privilege over the movables in the hotel.

The syndic of X.'s bankruptcy takes a very different view of the circumstances, and not only denies A.'s right to exercise the lessor's privilege, but claims that A., far from being a creditor, can be called upon to make good X.'s liabilities, so far as they were incurred in the conduct of the hotel. By what arguments can this claim be sustained (1) ?

153 — A. is owner of a large tract of land on the sea shore, from which he derives a profit by pasturing thereon considerable flocks of sheep and goats. In the year 1900 he makes a verbal agreement with B., under which the latter is to superintend the shepherding of 10,000 sheep and 3,000 goats, in consideration of a right to half the increase, and to half the proceeds of sale of animals from the flocks in question.

A year later A. learns by chance that B. has sold 3,000 of the sheep and 1,200 of the goats for ridiculous low prices per head. He thereupon sues B. and the purchaser X. to have the sale set aside, on the ground that without his consent it is void. Is this claim admissible ? Will it make any difference whether or no B. or X. acted in good faith ?

About the same time C., to whom B. owed £2,000, claims the right to take the remaining sheep and goats in execution. Can he do so ?

To solve these problems it is necessary to determine the nature, under Egyptian law, of the contract between A. and B. (2).

(1) Cf. DALL. *Per.* 76, 1, 197.

(2) Cf. Revue Algérienne, 1888, p. 180.

VII. — EFFECTS OF CONTRACT AS REGARDS THIRD PARTIES.

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154 — A. sells an immovable to B., on January 1, 1900, on the terms that B. is to pay the price, £1,500, before January 1, 1901, otherwise the sale be held void.

B. takes possession but does not transcribe.

On March 10, A. sells the same immovable to C. for £500, the price to be paid within 3 months. C. has full knowledge of the previous sale to B., but intends to rely upon punctual transcription. Owing to illness, however, he fails to transcribe until June 1.

Meanwhile, on March 25, B., in ignorance of the subsequent sale to C., has paid to A. the whole of his purchase money, namely £1,500. On June 10 C. sues B. in revindication of the immovable, relying upon his purchase and transcription.

B. cites A. as a party in the action, and claims:

(1) As against C., (*a*) that C.'s knowledge of the prior sale to himself, (B.) deprives him (C.) of the benefit of his early transcription; and (*b*) in the alternative, revocation of the sale A.-C. under art. 143 C.C. (Paulian action). In support of this he alleges, what is not controverted, that A., by his sale to C., has rendered himself insolvent.

(2) As against A., B. claims, in the event of the Court holding the sale A.-C. valid, damages, and restitution of the price paid, under arts 304, 306.

C. replies:—

(1) That the sale to himself is valid in virtue of his transcription, in spite of his knowledge of the prior sale to B. (cf. art. 270, Nat. C. C., as interpreted by Mixed C. A., 30 April, 1890, 19 February, 1896, 12 January, 1898) and

(2) Furthermore, that it is not liable to be set aside under art. 143 since it is a principle of the Paulian action that the creditor's claim must arise before the alleged fraudulent transfer. Now B.'s rights arose either at the date of the trouble to his possession

(the 10th June); or perhaps (in respect of the price) on the 25th March, when it was paid: whereas the transfer to C., whether fraudulent or no, was on March 10.

B. replicates, as to the second point, that the transfer to C. was on June 1, date of the transcription, when first the sale was opposable to himself.

A. does not defend.

155 — V. subscribes a sanad (or unilateral private obligation in the form peculiar to Egyptian practice) in favour of P., dated January 5, 1900, wherein he declares that he has sold to P. 100 feddans of land situated at Gizeh for the sum of £1,000. This sanad is deposited with the broker C.

V. undertakes to present himself within three days at the registry to transcribe the contract and to receive the price. As he fails to appear, P. summons him on January 10th to complete this formality on the 12th. Still V. remains recalcitrant, and on the 13th P. himself transcribes the contract. He then sues V. for a declaration of title, and obtains judgment by default.

On proceeding to the land, armed with this judgment, P. finds B. in possession; and B. relies upon a contract of sale from V. dated January 11, and transcribed on the 15th. As B. resists the execution of A.'s judgment, the latter is compelled to revindicate. What decision?

156 — A. was the owner of 1,500 feddans of land in the Fayoum. In the year 1883 he sold 500 undivided feddans of this land by separate contracts to B., C., and D. who all registered their titles. In April 1888 E., who passed in the eyes of the local people for A.'s agent, agreed with B., C., and D., upon a partition of their purchases, with A. and with each other. This agreement he put in writing in three separate instruments of partition, in each of which he claimed the position of A.'s representative, and which instruments B., C., and D. punctually transcribed.

In 1902 A. sold his remaining 1,000 undivided feddans to M. who transcribed, having first formally called upon B., C., and D. to declare whether or no they desired to preempt.

In April 1902, M. sued B., C., and D. before the Mixed Court of Cairo for a partition, claiming that he had purchased an undivided share in property which had never yet been authoritatively divided. A., who was made a party, was prepared to prove that E. had acted wholly without authority, and had in fact rendered A. no account of his proceedings from 1888 to 1902, and had appropriated the revenues of A.'s Fayoum estates. M. claimed that the partitions entered into by E. cannot be set up against him, although registered, since they were made without A.'s authority.

B., C., and D. claim the benefit of five years' prescription with just title and good faith.

157 — A., a native, sold a certain property to B., a foreigner, for £1,000, giving the latter a short credit. A. was indebted to C. in a sum of £1,500, and shortly after the sale, A., B., and C. entered into a private contract (without legally ascertained date) whereby B. undertook to pay the price of the immovable to C., and A. discharged B. from the latter's liability to himself. C. gave no discharge to A. Later on arrestment is made by A.'s creditors as against B. B. deposits the £1,000 in Court, and calls upon C. to make his proofs in the distribution of the fund. C. ignores this summons and sues B. personally for the whole sum of £1,000. Can he recover. (1)

NOTE: In this case the following questions are raised (1) was the contract between A., B., and C. a novation, an imperfect delegation, or an assignment; (2) this question being answered, could A.'s discharge to B. be set up against A.'s creditors, and if not, was B. liable both to these creditors and to C ? See Wahl's note to the case cited.

(1) The facts are adapted from Moing c. Vassel, Sirey 89. 1. 465.

VIII.—ACTION FOR DECLARATION OF NULLITY AND FOR RESCISSION.

158 — A. being in a state of precarious solvency, negotiated a loan of £1,000 from B. A. lived in Cairo, and B. lived in Assiout. The arrangements were made by correspondence, and B. acted in good faith. It was agreed that the loan should be secured by a hypothec on an immovable belonging to A. For the purpose of paying over the money, and attending to the completion of the hypothec, B. appointed a Cairo lawyer, C., as his agent. C. was intimately acquainted with A.'s affairs, and had good reason to believe that, as was the fact, the loan of £1,000 was destined to wasteful expenditure, such as the purchase of personal luxuries, and the making of costly presents. C. completed and registered the hypothec on B.'s behalf. When the loan was expended, A. was insolvent.

In these circumstances can A.'s creditors have the hypothec set aside?

159 — A. being in embarrassed circumstances, and intending to provide for the future, at the expense of his creditors, by making a large present to his wife, borrows £1,000 from B., who obtains as security a hypothec on a house belonging to A., being fully aware of A.'s circumstances, and the use to which he intends to put the money.

A. has many creditors; one of the principal of these is C., to whom £300 are owing for goods delivered. C. brings the Paulian action against B. What is the nature of the judgment which he can obtain?

160 — A. and his wife B. are joint owners of equal undivided shares of a certain property. A. being threatened with insolvency enters into an agreement with B. for a private partition of their joint property whereby B. acquires a lot greatly exceeding A.'s

in value. Have A.'s creditors, who have taken no previous measures to prevent such a step being taken, any remedy? (1)

161 — A. makes a gift of an immovable worth £5,000 to his wife B., the conveyance being contained in an authentic instrument. At the same time A. and B. agree verbally that this gift shall in fact be treated as void between them, and that the instrument of gift (which is not registered) shall remain in A.'s possession.

C. is A.'s creditor, and wishing to execute a judgment obtained against A. by expropriating the immovable in question, offers to prove the simulation of the gift by witnesses and presumptions. May he do so?

162 — A. sells a piece of land to B. for £1,000, by a contract dated January 15, 1900, which contract contains a receipt for the purchase money. On January 20 the sale is registered. On January 27 P., who is entitled to preempt the land on the ground of being A.'s neighbour, registers a declaration of his intention to preempt. On February 6, B. hypothecates the land purchased to X. to secure a loan of £600. On February 10, P. begins a preemption action against A. and B., and summons X. in the action. It has come to P.'s knowledge that B. in fact only paid £400 for the land, and this is the maximum sum for which he is prepared to preempt.

(1) Can P. set up this alleged simulation as against X ?

(2) By what means may P. prove his allegation ?

163 — It is a disputed question whether a creditor whose obligation is subject to a term can exercise the Paulian Action. (Cf. Planiol, II. § 338). What is the interest of this question in view of art. 102 Nat. C. C., art. 156 Mixed C. C., and art. 1188, Fr. C. C. ?

(1) Note arts 143 and 457 Nat. C.C., and the difference between art. 882 Fr. C.C. and art. 460 Nat. C.C.

IX.—PERFORMANCE OF CONTRACT—CONTRACTUAL FAULT.

164 — A., wishing to start in the hotel business, buys a piece of land for £300 and then agrees with B. that the latter shall build him an hotel thereon for £1,200, to be finished and delivered by the 15th October 1903; B. to pay £40 penalty for every day's delay after that date.

In spite of repeated demands, both formal and informal, the building is not completed until the 15th February 1905. Then B. refuses to deliver possession until the price is paid. A. on the other hand claims the accumulated penalties, less the price—namely £4,880—£1,200=£3,680.

B. replies that this claim is entirely contrary to the spirit of the contract: and offers to prove that in view of the fact that the season has been notoriously disastrous for hotel keepers, A. has gained rather than lost by the delay. Would the case be altered if B. could prove:

(1) that the delay was due to accident or *vis major*; or

(2) that it was due to the act of a third party?

Supposing that the court holds A. to be entitled, in principle, to the penalties, should they run during the whole time of the trial up to final judgment—312 days?

165 — The first of November 1903 is fixed as the day for the general meeting, in Cairo, of shareholders of the Helvetico Egyptian Navigation Company, at which some important questions are to be discussed. A., who wishes to move a resolution, only has 15 shares; and 20 is the minimum number required as a qualification for admission to the meeting. A. consequently purchases on October 20, 5 more shares, at £E. 20 each, from B., a broker, who the same day sends him an account in the terms "20th October 1903; sold, by us to A., five shares in the Helvetico-Egyptian Navigation Company at £E. 20 each; total £E. 100; brokerage 50 P.T.; cash payment."

The following day A. gives B. a draft on his banker for 10,050 P.T., payable on delivery of shares.

Three days later, the shares not having been delivered, A. presses B. for them, and the latter replies that the order was executed on the Geneva Exchange, and consequently the shares cannot arrive for 15 days.

A. serves B. with a formal summons to deliver the shares, and then, the day before the shareholders' meeting buys five shares from his banker for £E. 25 each.

A. few days later B. having received the shares from Geneva, calls upon A. to take delivery, and to pay the price and his brokerage. A. refuses, and claims £E. 25 from B.

166 — A. owns a considerable amount of property in the town of X., and being desirous of developing the town he makes a present to the Government of a piece of land situated therein, to serve as a site for: (1) a hospital, and (2) a Summary Court. These motives are recited in the deed of gift. The Government fails to build either a court or a hospital.

Can A. compel the Government to build either the one or the other, or what remedy has he, if any? What law is applicable to the case?

X.—QUASI-CONTRACT

167 — Ahmed owned a plot of land in the Abdin quarter on which he proposed to build a house. He confided his project to his friend Boutros, and then departed for Constantinople, without having taken any steps in the matter.

Now Boutros had two peculiarities. In the first place he was by profession an architect and enthusiastically devoted to his art; and in the second place he was the ideal *negotiorum gestor* of legal speculation.

It so chanced that Boutros was passing Ahmed's piece of land one morning and noticed that it was covered with building materials of all sorts. "Curious!" said he to himself. "I did not know he had bought his materials before he left. I will give him a surprise on his return." So he called in builders, and proceeded to erect a mansion of eccentric design with the materials at hand. On Ahmed's return it came out that the building materials belonged to one Selim, who had stacked them temporarily on Ahmed's land with the latter's permission, and that Ahmed had sold the land during his absence to a Turk of the name of Derwish. After much quarrelling the following suits were brought:—

(1) Derwish against Boutros for the demolition of the house and damages;

(2) Boutros against Ahmed and Derwish for his out-of-pocket expenses;

(3) Selim against Ahmed and Derwish for a declaration that he has become owner of the house and land.

These causes being joined, Ahmed only asks that his name be struck out of the list of defendants, on the ground that he has no interest in the case.

168 — The Lybian Desert Railway Company—an Egyptian Company—issued in 1880 100,000 debenture bonds of 500 francs

each, bearing interest at 8% and extinguishable at par by annual drawings in fifty years.

A., who owned ten of these bonds, presented himself at the office of the Company on February 1, 1902 to obtain fresh certificates, all the coupons on his old ones having been detached. Eight days later the Company notified him that one of his bonds was drawn for repayment in 1887, a fact which had escaped both their and his notice. In spite of this drawing the company had continued since that time to pay him the interest on the bond in question, and had paid altogether in this way 600 francs. The company therefore claimed the restitution by A. of 100 francs and denied its liability to give him a new certificate for the bond in question.

A. denies liability and claims his certificate. (1)

169 — A. takes possession of land belonging to B., in bad faith. Ten years later he dies. C., A.'s heir, then takes possession of the land, in good faith. Three years later he gives the land to his daughter D. on the occasion of her marriage. She accepts it in good faith, and takes possession. Six years later B., the former owner, sues D. for the unjust enrichment accruing to her by the acquisitive prescription of the land. What decision?

170 — A. and B. are the coheirs of X. A. is in possession of a certain house which formerly belonged to X. When B. sues A. for his share therein, the latter denies his right and produces a contract of sale of the house in question by X. to himself. The Court holds that the alleged contract is a forgery, and affirms B.'s right to a share in the building. A. now brings a fresh action against B. for indemnity for useful expenditure incurred by him in repairing the house. Is he entitled to recover? What if the house had been destroyed by fire: (1) after the beginning of the action; (2) before the beginning of the action and after a formal summons to B.; and (3) before such formal summons?

(1) Cf. Thaller, Droit Commercial No. 595, p. 324.

171 — A.'s servant B. came to him one day and said "I want to go to my village to visit my relations, will you advance me £2 of my wages"? A. consented, but finding that he had no money in the house, said to B. "I will give you a note to my friend C. asking him to give you the money." A. then wrote a note as follows:—"Dear Sir, kindly give £2 on my account to bearer, B., as I am short of cash." B. took the note to C. and received the money. He then took it to another friend of A.'s, one D., and did the same thing. Can D. recover the amount paid from A., either in contract or in tort? What would be D.'s position if the sum indicated in the note had been above 1,000 P.T.? What if the note to C. had been put in an addressed envelope which B. destroyed? Can C. be held liable in any case? (1)

172 — A. is a minor; B. is his tutor. B. gives a lease in his own name of certain land belonging to A. to C. for a term of six years. When A. attains his majority this lease has still two years to run. A. repudiates it under art. 364 Nat. C.C. Is C. entitled to damages: (1) against A.; (2) against B? Would B.'s liability be affected by the fact that he had stated in the contract that he was acting on behalf of A., as his tutor?

(1) This problem is suggested by Ihering in his essay on "Culpa in Contrahendo."

XI.—TORT.

173 — A. is the owner of a large and fine house which is separated from Kasr-el-Nil street by a vacant lot belonging to B. The windows of A.'s house are at the distance from B.'s limits required by arts 39, 40 Native C.C. and 61, 62 Mixed C.C.

A. and B. have a quarrel, and B. to spite A. builds a high barricade of wood on the extrême limit of his land adjoining A.'s, to a height some metres above the roof of A.'s house, thus depriving it of light, air and prospect.

A. sues B. for the removal of this barricade. Can A.'s lessees, whose appartments have been rendered uninhabitable, have their leases rescinded? Can they claim damages? If so, from whom?

(Cf. arts 60 and 61 Mixed C.C. arts 38 and 39 Nat. C.C.)

174 — A. and B. were both interested in the launching of a certain company, whose shares they had underwritten. No business relationship existed between them. They both came independently to X. and informed him that a secret understanding existed between the promoters of the company and the Government, which would be the source of great profit to the former. They both knew this statement to be false. X. was thus induced to expend £1,000 on the purchase of shares. Has X. any recourse against either A. or B.? If so, can he hold them jointly and severally liable? If A. pays the whole amount of the judgment obtained, has he any recourse against B?

175 — The Government gives a concession to a company to work a system of electric trams with overhead wires in the public streets of a certain town. The concession is gratuitous, except for the obligation of the company to keep in repair that part of the roads which lies between the tramway lines.

An overhead wire charged with electricity falls one day into the road and kills A. Can A.'s heirs sue the Government? Will it affect the case if the Government shows that the accident was due to an unusually violent wind?

176 — A. manufactures a certain drug in bottles, which bear a label stating the strength of the preparation, and the proper dose to be taken for certain ailments of the stomach.

A. sells a certain number of these bottles to B., a retail chemist. B. sells one bottle to C.

One day D., who is C.'s cousin and is staying with him on a visit, is seized by a disorder for which the drug in question is frequently prescribed. He calls in E., a doctor, who in fact orders a dose of the drug. On C.'s bottle being shown to E., he approves of it, saying that A.'s drugs are the best in the market, and D. takes a dose as directed on the bottle and as recommended by E.

As a matter of fact the bottle in question contains a preparation of double the strength stated on the label, and D. is seriously ill for a considerable time. Can D. sue E., C., B., or A., or any one or more of them? If he recovers against any one of them, what rights of recourse arise?

Would the fact that E. was not an authorised practitioner affect his liability?

What of the liability of the various parties if the label on the bottle was in a foreign language which E. understood, but C. and D. did not?

177 — A. is the editor and B. is the printer, of a newspaper, in which every day a list is printed of the principal stocks and shares dealt with on the local Bourse, with their current prices. On a certain occasion the shares of the "Financial Trust Syndicate" are erroneously stated to be selling at L.E. 26, their actual market price being L.E. 20 only, as it has been for the last year.

C., a widowed lady residing in the country, sees the number of the newspaper in question, and immediately wires to her banker to sell out her 25 shares in the aforesaid company. Shortly afterwards she discovers her mistake, and as in the meanwhile the shares have really risen in value to LE. 24 each, she seeks

(1) To have the sale set aside,

(2) Damages against A. and B.

178 — A. and B. are owners of adjacent houses built upon a mound of *sebakh*. A. pulls down his house, and sells the *sebakh* to C. C., without in any way encroaching upon B.'s limits, removes the *sebakh* which he has purchased, and in so doing deprives B.'s outer wall of necessary support, so that it falls down.

Has B. any rights against C?

179 — A. professes to be a magician, and by the pretended exercise of the Black Art obtains great influence over B., a person of weak and superstitious intellect. He persuades B. to pay him a large sum of money, in instalments, for initiation into certain higher mysteries the knowledge of which will enable B. himself to become invisible, and to turn lead into gold. The incantations to which A. resorts in B.'s presence so affect the latter's nerves that, in an access of fear lest he may have offended the spirits by his presumption, he resolves to commit suicide, and in fact does so. He leaves a letter to his brother explaining the motives for which he has destroyed himself.

Is A. civilly or criminally liable?

180 — A., who has had many family and business troubles, confides his griefs to B. The latter strongly recommends him to commit suicide, and gives him a certain poison manufactured by himself (B.) together with instructions for its use. A. follows the instructions and dies.

Is B. civilly or criminally liable?

181 — A. is a student at the school of law. Having been absent from lectures for three days, he is expelled from the school by the competent authority.

A. claims that during the three days in question he was prevented from leaving his house by the accumulation of rain water in the street, for which state of things the Government is responsible.

A. sues the Government, claiming (1) his readmission to the school, and damages in the alternative, and (2) damages for the injury done to his house by the accumulation and infiltration of rain water.

The Government pleads that the court is without jurisdiction to deal with (1), and that with regard to (2) the Government is not liable for the ulterior consequences of the state of the street.

182 — A. and B. were day-boarders at the College for Young Gentlemen kept by the Reverend Fathers of the Order of St. Anthony, of which the Director was the Reverend Father X.

One day A. and B. were playing with their school fellows in the play ground, when A. flew into a fit of insane rage, fell upon B., threw him down, and bit him severely in the face. B. was ill in consequence for a considerable time, and emerged disfigured for life. B.'s father thereupon sued X. and his associates jointly and severally for damages on behalf of his son. It was proved that A. had been hitherto of a quiet and orderly disposition. One of the fathers was present in the play-ground at the time of the occurrence, but was unable to interfere in time. Can B.'s father recover?

(Cf. arts 151, 152 Nat. C.C.; arts 213, 214 Mixed C.C.; arts 1382, 1383, 1384 French. C.C.)

183 — A. is a boy of 16 years of age, of a violent and uncontrolled character. He is a pupil in a boys' school kept by X. One day, his teacher B. sets him to write out 1,000 lines of Racine, as a punishment for unruliness. A. immediately draws a revolver from his pocket and fires at B., wounding him mortally. The bullet also strikes C., an artisan, who is working outside the window, and injures him severely. A number of persons rush in to secure A., and in the struggle which ensues the revolver goes off again, killing A.

(1) C., and B.'s heirs, sue both A.'s father and X.

(2) A.'s father sues B.'s heirs and

(3) X. claims damages against A.'s father for the injury done to his institution.

Would the fact that the punishment set by B. to A. was grossly unjust have any bearing on any of the above claims?

184 — A. is the owner of a piece of land in which he builds six one-story shops. As soon as the first of these is finished, and

while the remainder are still in the hands of the builder, A. lets it to B. who opens a saddler's shop therein.

One night four thieves obtain access to the unfinished shop adjoining B.'s, conceal themselves behind the boarding left by the workmen, and at a suitable moment easily make their way through the slight partition wall into B.'s premises, where they help themselves to a quantity of valuable goods. They get out on to the road unobserved, and are soon overtaken by a waggon belonging to the Sanitary department, on which they obtain permission, in consideration of a bakshish, to ride as far as the outskirts of the town. Their booty is piled on board with the assistance of an unsuspicious gaffir.

B. sues A., the builder X., and the Egyptian Government jointly and severally for the value of his goods. Should he succeed against any or all of them? If so, what if any recourse have the defendants who satisfy the judgment against the others?

By what means may B. prove the value of the goods stolen?

What if the theft took place under the eyes of two gaffirs who made no inquiries and offered no opposition?

185 — A., an ironmonger, covers the walls of the town with advertisements, and distributes thousands of leaflets to the following effect: "My show rooms are the largest in Egypt; my shop is the only one in the country in which the wants of the public are intelligently, promptly and honestly attended to. I will pay £1,000 to any person who will show me another house in this town, or elsewhere in the country, where you can obtain a better class of goods at my prices, under comparable conditions of management, warranty or honorable dealing."

B., a dealer in general European fancy goods sues A. claiming:

a) The reward of £1,000;

b) £4,000 damages; and

c) The destruction of the above-mentioned advertisements and leaflets.

On what facts and principles can he base these claims?

186 — A. is a young man of fortune who, desiring to make a practical study of mechanical engineering, takes a position as

machine-tender in the factory of the Gizeh Sugar Refining Company at a wage of 10 P.T. a day. He is put on to superintend and stoke an engine.

One day the engine explodes, kills A. and B. (a fellow workman who was bringing coal for A.'s furnace) and sets fire to the engine house. The fire is not brought under until it has made such ravages that it is no longer possible to discover the cause of the accident.

A.'s heirs sue the Company for damages for A.'s death. The Company sets up a cross claim for the damages done to its property. B.'s heirs sue both the Company and A.'s heirs for damages for the death of B. What decisions, on the facts as above stated?

Supposing it to be proved that the accident was due to a defect in the engine, is the Company liable to either A.'s or B.'s heirs? Can the manufacturer be made liable, and if so to whom?

187 — A. purchases a "Star" motor car from B., a local retail dealer. He requests his friend C., an accomplished *chauffeur*, to take delivery of the machine and to bring it out to his (A.'s) house at Abbassiyeh, there to give him a lesson in driving. C. takes over the car, as directed, and proceeds to do several errands in the town on his own account, before proceeding to A.'s house. He has not been going more than twenty minutes when something goes wrong, and he finds himself wholly unable to check the pace of the machine. It dashes on, comes to grief, and seriously injures both C. and D., a passer-by. Who is liable to D? A., B., C., or the manufacturer? What actions in recourse arise? What becomes of the manufacturer's liability, if he can prove that the accident was due to the defective make of a part sold to him ready made by a different maker?

188 — A. is the owner of a motor car. One day he leaves his machine in the street unguarded while he goes into a shop.

In A.'s absence B., a child 13 years of age, gets into the motor car and begins to play with the driving gear. The consequence is that the machine starts off at a high rate of speed, seriously injures one C., kills B., and is itself smashed to atoms.

C. and B.'s father, D., sue A. respectively for the injuries done to C. personally, and for the moral suffering caused to D. by the loss of his son.

A. replies to C. by merely denying all liability. As against D. he sets up a counter claim of £400 the value of his machine, and £200 for the inconvenience caused to him by the temporary loss of his habitual means of transport.

189 — A. is owner of a motor-car. He entrusts the key of the building in which the car is housed to his *chauffeur* B., in order that the latter may be able to attend to the machine. B. is forbidden to take the machine out except by A.'s orders. Nevertheless B. one days offers to take his friend C., (who is a total stranger to A.), out for a drive. During the outing one X. is knocked down and seriously hurt as a result of B.'s carelessness.

Who is responsible and in what degree? What difference, if any, would it makes in the case if it could be shown that C. was in fact hiring B.'s services for the ride?

190 — A. boards a tram and rides for some distance. When asked for his fare, he refuses to pay, alleging that on the previous day he had erroneously paid a double fare. An inspector, who is on the tram, forces him to alight, and takes him to the Caracol where he is detained for some hours. Has A. a right of action against the Tramway Company? Is A. open to an action by the Company?

191 — X.'s house is on fire. In order to prevent the fire spreading to Y.'s house A. blows up B.'s house with gunpowder, B.'s house being between X.'s and Y.'s Is B. entitled to compensation from either A. or Y? Does it make any difference, (as between B. and A.) whether or no A. is acting under the directions of a public authority? What if it was Y. himself who blew up B.'s house, acting under the instructions of the police? What if Y. blew up B.'s house on his own initiative, with the object of saving not only his own house, but a whole quarter of the town behind it.

192 — A. challenges B. to a duel. They meet, and A. is mortally wounded. A.'s widow sues B. for damages. Is the widow's action sufficiently met by the principle *volenti non fit injuria*? Would the solution be different if the action were brought by A.'s heirs, being remote relatives not dependent upon him for support?

193 — A certain pasha, X., engages one A., a well-known trainer of horses, to take charge of his racing stable for a period of 3 years, at a monthly salary of £40. Shortly after A. has entered X.'s service, he mysteriously absents himself, and X. subsequently discovers that he has been induced, by the offer of a yet higher salary, to enter the service of Y. pasha. Supposing that Y. knew what he was doing, has X. any right of action against him?

194 — B., being employed by A. to build a house for him, puts in unduly weak foundations. Nevertheless, when the house is finished, it has every appearance of being well constructed, and A. sells it for a good price to C. Three years afterwards the house begins to fall down. A. is insolvent.

Has C. any recourse against B.? Will it make any difference:—

(1) If A. has died, leaving B. as his sole heir?

(2) If C. has allowed three months to pass after first perceiving the defects in the house, without taking any steps, other than that of consulting engineers?

195 — A. was seriously ill with an internal disease, but absolutely refused all medical treatment. At last he became unconscious, and his brother (B.) decided to send for Doctor D. As soon as D. saw the case he explained that an operation was necessary, and was in fact so urgent that although a general practitioner, he would perform it himself. He did so, and A. died under chloroform. A post-mortem examination was made on the demand of other relatives of A., and it appeared that D.'s operation, though skilfully performed, was quite unnecessary, and that, if left alone, A. would very possibly have recovered. D.'s diagnosis

was in fact erroneous, but excusably so. On these facts the tutor of A.'s children sues D. for damages on their behalf, arguing that the limitation of a medical man's liability to cases of fault and gross negligence only exists where there is a contractual relation between him and the patient, which could not exist in this case; otherwise the doctor is absolutely responsible for the consequences of his intervention.

196 — An action was recently brought against the Government by a resident in the neighbourhood of Abdin Square, asking for the abatement of the nuisance caused by the perpetual practising of military instruments in the barracks. Was this claim within the competence of the Courts, and was it justified?

197 — The following advertisement recently appeared in an English newspaper.

"Wanted 10,000 head of cockroaches and other vermin, sufficient to stock a large house. Advertiser is quitting leasehold premises at the end of December and is bound to leave them in the condition in which he found them."

If the advertiser carried out his project would he incur any liability to his lessor?

198 — A. sends a telegram to B., his banker, directing him to *sell* one hundred shares in a certain company. Through a mistake in the transmission of the telegram, the message actually delivered directs B. to *purchase* a hundred of the said shares. These shortly afterwards fall considerably in value, and B. writes to request A. to settle his liability, whereupon the mistake is discovered. A printed clause on all telegram forms stipulates that the administration shall not be liable for the consequences of mistakes in transmission. Is A. bound by the order actually received by B? If not, is the telegraph administration liable?

199 — A., a Cairo doctor, hires a two-horse victoria from B., a carriage-jobber, for £16 a month, on the terms that he is to have the use of the carriage every day from 9 a.m. to 8 p.m., and that the coachman and horses are to be provided by B.

A. was one day on the point of getting into the victoria with his friend X., when he was called to an urgent case in a neighbouring house. He requested X. to make use of the carriage for an hour or so. X. ordered the coachman to take him round the Gezireh drive. On the way a pedestrian was run over through the carelessness of the coachman. Can A., B., or X. be held liable in damages?

200 — A. was standing one day on his own land by the railway track watching the express-train go by. Suddenly an empty bottle flew from a window of the train and struck A. violently on the head, causing him serious injury. It is a notorious fact that the practice of throwing dangerous missiles from the windows of railway carriages is only too prevalent; and for this reason the Railway Company has posted, in a prominent place in every compartment, a notice forbidding the practice. On these facts is A. entitled to damages against the Railway Company? Would it affect the case if A. instead of being on his own land, was at the edge of the embankment (land of the Company) where the public is forbidden, by frequent notices, to go? What if A. was a plate-layer working on the track: (1) employed by the company, or; (2) employed by a contractor? (1)

201 — X. (a woman) having sustained accidental injuries, is treated in a Government hospital. She complains that, owing to the negligence of Y., the Government doctor, certain of her injuries have been rendered permanent. She makes claim against the administration for damages. The administration denies liability. Before bringing her action, she marries Y. Can the administration still be held liable?

Would it make any difference if she were already Y.'s wife before she entered the hospital?

202 — A. is a young and enterprising doctor, who has somewhat distorted notions of the way to succeed in his profession.

(1) Cf. Digest, lib. IX, tit. 3, *de ejectis vel effusis*

He accordingly proceeds, at the opening of the season, to one of the principal watering places of Bohemia, and makes arrangements for *pension* for three months, at extravagant terms, at four of the most fashionable hotels. Having thus obtained the *entrée*, he turns his attention to making the acquaintance of the wealthiest and least robust among the visitors. He finds his progress in social and medical reputation considerably accelerated by his generous and frequent gifts to the clerks, porters and waiters of the hotels.

On the recommendation of the secretary of the Hotel Impérial, X., a rich American, calls in doctor A. to attend to the former's aunt Z., an elderly lady who suffers from indigestion. A. visits his patient twice a day (charging 200 P.T. per visit) and administers such varied and potent drugs that she succombs to various complications in a month's time.

Everything then comes out. Appalled by the prospect of a scandal, Y., the manager of the Hotel Impérial, requests A. to confine his attentions for the future to the visitors at the three other hotels at which he resides. A. relies on his contract, which has still two months to run. Y. has his things put out into the street, whereupon A. sues him for £2,000 damages.

X. sues A. and Y. jointly : (1) for £100, being the total amount paid by him to A. for treatment and drugs and ; (2) for £30,000 damages.

B., C., and D., doctors in the town, join together to sue A. for £400 damages apiece for dishonest competition (*concurrence déloyale*). They also make a similar claim against the Hotel de l'Avenir, the Hotel du Paradis, and the Hotel de l'Age d'Or, besides the Hotel Impérial.

What decisions ?

N.B.—Z. was in the habit of spending eight months of every year with her nephew, who offered her lavish entertainment and paid all her travelling expenses. On the other hand she left him by her will her whole fortune of 800,000 dollars. She enjoyed normal health. A.'s treatment was confined to the administration of a great variety of fancy drugs, while encouraging her to follow her fancy in the matter of diet.

What if the secretary of the Hotel Impérial took particular part in the introduction of A. to his client, but it can be shown that the manager of that hotel (as likewise the managers of the other hotels with which he contracted) were perfectly aware of his methods and objects, and charged him exceptionally exhorbitant rates?

202 *a* — A. is injured by an accident due to B.'s fault, and dies in consequence. He leaves as his sole heir one X., a distant cousin whom he has never seen, and with whose family he has long been on bad terms. Has X. any right of action against B.? Would it make any difference if A. had begun an action against B. before his death, but had died before judgment?

XII.—SECURITIES.

§ 1. Suretyship.

203 — A. is a banker, and is interested financially in the promotion of a certain industrial company. B. is one of A.'s clients, and consults him as to a suitable investment for a sum of money. A. recommends the purchase of shares in the above mentioned company. In his letter on the subject he says : " I can promise you that you will not regret making this investment." B. accordingly directs A. to purchase 50 shares ; the current price is £6 a share, the nominal price £5. The company, which never pays a dividend, shortly afterwards goes into bankruptcy, and £1 per share is paid to the shareholders. B. claims that A. is bound to make good his loss, as he is in the position of surety for the company. He makes no allegation of fraud, but is able to show that A. was financially interested in the successful floatation of the entreprise.

Would B.'s position be affected by the discovery that the shares which A. had in fact sold to him were A.'s ?

204 — A. borrows a sum of money from B., and C. joins in the contract as surety. Subsequently, B. recovers judgment against A. by default, but before he proceeds to execution, C. voluntarily pays the amount. Later on C. sues A. for indemnity and A. defends the action on the ground that at the time of the loan he was a minor, and that the money did not permanently profit him in any way. Advise C.

205 — A., B., C., and D. wish to found a newspaper to advocate certain opinions to which they attach importance. They agree verbally that A. shall be editor and manager, and shall make all necessary business arrangements. B., C., and D. write letters to A. promising to hold him indemnified against loss. The newspaper is carried on for a year and is then given up, as it

has proved a financial failure. A. has incurred considerable debts and goes bankrupt. His syndic seeks to enforce against B., C., and D. their promises of indemnity. Can they resist payment : (1) on the ground that their letters offering indemnity were never explicitly accepted, or (2) on the ground that their contract constitutes a leonine partnership ? Are A.'s creditors, whose debts arose in connection with the newspaper, entitled to any preference, out of the proceeds of B., C., and D.'s payments, as against A.'s private creditors ?

206 — A., who is a merchant in Cairo, appoints B. as his agent in Alexandria, on obtaining the suretyship of C., who undertakes to guarantee any commercial liabilities incurred by B. up to £500. Five years later A. becomes suspicious of C.'s financial condition, and threatens to withdraw his agency from B. B. thereupon obtains a second independent surety (D.) who guarantees him up to £1,000. Ten years later B. becomes insolvent, his indebtedness to A. being £700. This debt is paid by D., who then seeks contribution from C. Is he entitled to recover any part, and if so what, from C ?

B.'s liability to A. is the balance of a current account which has been running for over fifteen years, without having ever been closed. Can C. invoke the benefit of extinctive prescription : (1) as against D., or (2) as against A ?

§ 2. Pledge.

207 — A. goes to an hotel, runs up a bill of 100 P.T., and leaves without paying. On another occasion he returns to the same hotel with a quantity of baggage and runs up another bill of 150 P.T. He proposes to pay the latter, but not the former, before leaving. Can the hotel keeper retain A.'s baggage for the former debt ?

208 — The famous American painter, Whistler, contracted with a certain Englishman, Sir William Eden, to paint the portrait of the latter's wife, Lady Eden. It was arranged that the price

should be fixed by a third party, who ultimately decided that 'between 100 and 150 guineas' would be a suitable amount. Whistler finished the picture and exhibited it at the Salon. Sir William Eden and is wife frequently saw the picture after it was finished and were highly satisfied with it. When the time came for the exhibition to close, Eden wrote to Whistler asking him to deliver the picture, and enclosing a cheque for 100 guineas. This sum Whistler regarded as absolutely inadequate, and refused to deliver the picture. The parties quarrelled, and finally Eden sued Whistler: (1) for specific delivery of the picture and (2) in the alternative for damages, and for an order directing Whistler either to destroy the picture, or to deprive it of its resemblance to Lady Eden. What were the legal rights of the parties (1)?

209 — A. pledges his watch to B. for £15, both parties being natives. A. subsequently sells the pawn ticket to C. for £5. C. then seeks to redeem the watch, making a 'real offer' of the £15. On B. objecting that he has not assented to the assignment of the pawn ticket, C. replies that he is not suing on the contract, but revindicating as owner. Is his contention well founded? If so, what, if any, is the prescription of his action?

210 — Yanni is a cigarette manufacturer; George is his young cousin, employed in the business. George, who is naturally anxious to start in the world on his own account, however modestly, persuades his prosperous relative to lend him £100, which Yanni undertakes to do, as soon as George shall have found suitable premises. At last George finds a shop to his liking, and he and Yanni together with X. (another of Yanni's employes) and P. (the owner of the shop) enter into the following contract, four copies being made:—

The parties declare that Yanni has on this day lent to George £100 at 9 % yearly interest, the said loan being given in conside-

(1) The statement of facts is adapted from the reports in DALL. *Per.* 98. 2. 465 and 1900. 1. 497 where a full discussion of the questions raised will be found.

ration of a promissory note at six months from date subscribed by George:

P. agrees to lease the said premises to George, for a term of three years:

George contracts with the other parties hereto as follows:

(1) To pay to P. an annual rent of £60, payable 6 monthly in advance;

(2) Subject to the lessor's privilege (which is expressly reserved) the business is pledged to Yanni to secure his loan;

(3) No other cigarettes than those manufactured by Yanni shall be sold in the proposed business;

(4) During the duration of the present contract X. shall alone exercise the powers of manager of the business carried on in George's name, and shall alone be entitled to use the signature "George" reproduced below; X. shall however incur no personal liability;

(5) X. shall be entitled to take 20 % of the gross monthly profits by way of remuneration.

Executed at Cairo in four copies, January 1, 1902. Yanni shall be entitled to keep George's copy by way of further security for the fulfilment of the present contract.

Signatures:—

The signatures being duly affixed to the four copies, Yanni hands £100 to George, who gives him a note for the amount at six months from date.

On April 30, 1902, Yanni, being in want of ready money, endorses George's note to Constantine, a banker in Cairo. The endorsement is "without warranty." Constantine subtracts £12 from the face value of the note by way of discount.

On June 15 of the same year George sells his business to Boutros for £60, Boutros having no notice of the above recited contract. George describes himself in the contract of sale as as lessee under a verbal lease, and stipulates for an immediate payment of £8 on account of the price, the remainder to be payable on the 15th of October, the date on which possession is to be given. This contract is duly registered.

On July 1, Constantine presents George's promissory note for

payment. George fails to pay, the note is protested, and a fortnight later George is declared bankrupt. The liabilities are over £400 ; the assets consist of the business or at any rate of the £52 still due from Boutros.

Yanni claims the right of preference as pledgee of the business; Boutros and George's creditors resist this claim.

Boutros claims to be owner of the business, and offers to pay the £52 still due from him to whoever may be entitled to receive it.

The syndic refuses to recognise either Yanni's or Boutros's contracts. (On what grounds?) He also claims that he is entitled to call upon X. and Yanni to make good George's liabilities. (What are his arguments?)

Finally the syndic refuses to admit Constantine to proof in the bankruptcy, on the ground that the discount claimed by him was usurious.

Constantine resists this pretension ; and in his turn claims the right of recourse against Yanni, in spite of the clause of his endorsement barring warranty, saying that the facts (here narrated) which have recently come to his knowledge for the first time render this clause null and void.

X. protests that no action lies against him, since he simply acted as Yanni's agent for the purpose of taking and keeping possession of the latter's pledge.

Boutros claims the immediate execution of the sale in his favour. (On what grounds? In what circumstances can the syndic claim the rescission of this sale?)

Suppose the facts somewhat simplified, to the following effect.

Under the contract of January 1, 1902, Yanni lends George £100 for three years, the loan to become immediately due on the breach of any one of the terms of the contract. A year later George makes and sells cigarettes bearing his own mark. Yanni sues him on the promissory note (which has been several times renewed) for £100, and has him declared bankrupt. The creditors claim that this contract is not only void as against them, but that its effect is to make Yanni and X. liable to make good George's business debts.

211 — A. opens an unauthorized pawn shop(1), and lends money on pledges to various persons, including B., to whom he lends £10 on a watch. It subsequently turns out that the watch belonged to C., from whom it had been stolen :

(1) C. sues A. for the watch. Can A. insist on the repayment of the £10 by C. ?

(2) C. having recovered the watch without having paid the £10, A. sues B. for the debt. B. defends on the ground that the loan was an illegal contract. Would it affect the case if A. had obtained an authorisation subsequently to his loan to B. ?

(3) Facts as above, except that the watch is B.'s. A.'s shop is destroyed by fire, through no fault of his, and the watch disappears. A. was not insured. B. sues A. for the value of the watch, less £10. A. replies *(a)* that the contract of pledge was void for illegality ; and *(b)* that in any case B., in waiving the non-authorisation, waived also the duty to insure imposed on authorised establishments by the decree of 1900.

212 — A. was a money lender who had mistaken his vocation. He made with B. the following rather unwise agreement :

He agreed to lend B., and did lend him, £1,000 at 2 % per annum, receiving as security 120 £10 bearer debenture bonds of the Financial Trust Investment Syndicate, bearing interest at 6 %. It was further agreed that A. should be entitled to receive to his own use the interest on the bonds deposited in addition to the interest payable by B., but that he should at no time be entitled to claim the repayment of the loan so long as he held the bonds deposited ; B. being alone entitled to terminate the loan and redeem the bonds, at whatever time he should think proper.

Three years later the Financial Trust Syndicate fell into very low water, and, as a part of a reconstruction scheme, an appeal was made to the debenture holders to surrender for five years their right to all interest on their bonds, in order to permit of the issue of new preferred debentures ; the subsequent rights of the present debenture holders to be determined by the earnings of the

(1) Cf. D. 24 Dec. 1900.

syndicate. The question was brought up at a general meeting, and A., voting as holder of B.'s bonds, felt compelled to cast his vote in favour of the proposal, which was carried.

Has A. any right of recourse or remedy against B.? What if the syndicate goes bankrupt, and the bonds become worthless?

§ 3. Hypothec.

213 — A. and B. made a contract whereby A. agreed to deliver to B. a steam plough on the terms that B. should be lessee thereof for five years at an annual rent of £20; and that thereupon B. should become owner of the machine and should thereafter make up the remainder of the price by five more annual payments of £20. B.'s land, for the cultivation of which the steam plough was destined, had previously been hypothecated to X. About two years after the execution of the contract B. became insolvent, and the question then arose whether A. was entitled — as against X. — to a vendor's privilege over the steam plough. What solution (1)?

214 — A. contracts with B. by authentic instrument as follows: that B. shall build a house for A. for £1,000 on a plot of land belonging to A.; and that B. shall look for payment only to the proceeds of a hypothec which A. is to give him on the land and house. The house is built, and accepted by A.; and B. registers the above mentioned agreement in the register of hypothecs. Finding that A. refuses to pay for the house, B. seeks to enforce his hypothec and at the same time sues A. personally for £1,000. A. replies that it has been expressly agreed that he is under no personal liability; and further claims, that this being so, the hypothic itself is void, since a hypothec can only exist to secure a debt.

215 — A. has a hypothec over B.'s land to secure a loan of £1,000. C., an unsecured creditor of B.'s, pays A. £600 on

(1) Cf. Rev. Crit. 1891 p. 65.

account of his debt : and subsequently D., also an unsecured creditor of B.'s, pays A. £400 for the same object, thus entirely discharging his claim. B. becomes insolvent, and the property charged with the hypothec turns out to be insufficient to satisfy the sum charged on it. What are C.'s and D.'s rights respectively (1).

216 — A. and B. (both Egyptians) were co-owners of a house. In 1895 A. lent B. £5,000, and B. gave him the following securities : (1) a hypothec on the house ; and (2) an assignment of B.'s eventual share in the proceeds of the house, if and when sold. This assignment A. accepted in general terms. The assignment had legally ascertained date.

In 1896 B. borrowed £3,000 from C., a foreigner, and gave him similar securities, namely a hypothec and an assignment of B.'s share in the price of the house. This assignment was merely notified to A.

In 1897 it was decided to proceed to a voluntary judicial sale (*licitation*) of the house, which was ultimately bought in by A. for £12,000. A. clause in the conditions of sale (*Cahier des charges*) provided that the price should be payable *pro tanto* to preferred creditors whose claims were duly registered. Meanwhile, B. being insolvent, C., by way of obtaing further security, had registered on his behalf a partitioner's privilege on the proceeds of the sale.

C. then claimed that, in the circumstances, he was entitled, as against A., to payment in full out of the price of the house of the amount of his debt against B. A. is only prepared to give him £1,000. What are C.'s rights (2)?

217 — In the year 1890 A. sold a plot of land to B., and the parties further agreed, by the contract of sale, that B. should be bound to construct a building of a certain size and value upon the plot within a period of 3 years ; and in default that he should be liable in a penalty of £1,000, which penalty should be secured by

(1) Cf. Fr. C. C. art. 1252, and D. 1903. 2. 73.

(2) Facts adapted from Lelièvre c. Moulinet. DALL. *Per.* 1901. 1. 328.

hypothec upon the plot in question. This agreement was formulated in an official instrument, and the hypothec was registered.

In 1901 B. gave a second hypothec upon the same plot to X.

In 1902 it became apparent that B. was, owing to lack of funds, not progressing with the stipulated building. As A. was a large proprietor in the neighbourhood and interested in its development, he thought it desirable to give B. some assistance towards carrying out his obligation. He consequently entered into a fresh agreement with B. (contained in an official instrument,) under which he agreed to lend B. £1,500 at 5 %, to be secured by hypothec, and B. agreed to build a larger and better building than that previously stipulated, and to finish it within the period previously agreed upon, and subject to the same penalty. The parties further agreed that their previous hypothec should be continued to secure the penalty under the new agreement. This continuance was noted in the margin of the register of the first hypothec.

B. having failed to complete the building within the agreed time, A. brings action for the foreclosure of the first hypothec. X. contests the validity of its continuance, on the ground that the obligation which it secures has been either : (1) extinguished, or (2) rendered more onerous, to his prejudice (1). By what considerations should the decision of the court be guided ?

218 — A.'s land is hypothecated to B. to secure a debt which the former owes to the latter. A. sells his land to C., who, in the contract, expressly assumes personal liability for the hypothecary debt. Can B. sue C. directly on this undertaking ?

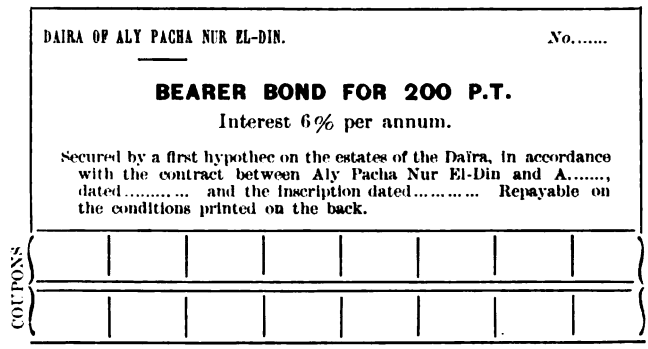
219 — Aly Pacha Nur-ed-Din, a wealthy landowner who wishes to establish a sugar refinery on his estates, makes a contract of the following tenor with A., a French banker :—

" A. agrees to pay Aly Pacha a sum of L.E. 100,000 in ten equal annual payments. Aly Pacha, in consideration thereof, agrees to give A. 65,000 numbered bonds of a nominal value of L.E. 2,

(1) Cf. Nat. C. C. art. 1892.

bearing interest at 6 % payable half yearly. The bonds to be repayable at par, at the rate of 5,000 a year, starting from the fifth year from date, the bonds to be drawn for repayment by lot. Bonds negotiable and payable to bearer ; interest payable against coupons thereto attached. Bonds to be secured by hypothec on specified lands in Cairo and the Moudiriyeh of Gizeh, which Aly Pacha agrees to make within eight days from date."

The obligations to be thus secured are in this form :


DAIRA OF ALY PACHA NUR EL-DIN. No.....

BEARER BOND FOR 200 P.T.

Interest 6% per annum.

Secured by a first hypothec on the estates of the Daïra, in accordance with the contract between Aly Pacha Nur El-Din and A....., dated..... and the inscription dated..... Repayable on the conditions printed on the back.

COUPONS COUPONS

Two days after the completion of the contract Aly Pacha and the banker meet by appointment at the registry of the Mixed Court to execute an authentic instrument in the terms of which Aly Pacha agrees to the registration of a first hypothec on the specified lands to secure a debt of L.E. 130,000 and interest, (namely the debt represented by the bonds,) in favour of A. and all subsequent holders of such bonds.

Is the first recited contract valid ? Can the registrar refuse to make the instrument last set forth ? Can he refuse to register the hypothec therein agreed to ?

If the hypothec is registered, of what effect is it as against Aly Pacha's creditors other than the bondholders ?

220 — In 1895 A. lends B. £500, secured by a first hypothec on B.'s house. In 1897 B. repays £400 of the loan, receiving in exchange A.'s receipt. No record of this partial repayment is made on the register of hypothecs. In 1898 B., who is again in want of money, asks A. again to lend him the £400 repaid in the

previous year, which A. does. B. restores the receipt which he obtained in 1897. This second loan of £400 is made by a cheque drawn by A. on the Credit Lyonnais.

It would now seem as though the parties were again in the position they occupied in 1895-7. Such at any rate is B.'s view, when in the course of 1900 he becomes insolvent. But his two creditors X. (an unsecured creditor) and P. (who has a secured hypothec on his house) endeavour without success to induce him to maintain that A.'s hypothec is only valid for £100. As they are aware of the facts above recited, and as they cannot induce B. to take the same view as they themselves do of their legal significance, they are reduced to an attempt to put them forward on their own account. In pursuance of this object they ask for a judgment against the Crédit Lyonnais ordering the latter to produce A.'s current account for the years 1895-1900. The bank refuses on the ground of its duty to respect the confidence of its clients. What decision?

What if X. and P. were asking for production of B.'s account?

Supposing X. and P. to succeed in proving the repayment made in 1897, would A.'s hypothec be valid in 1900 for £500 or for £100 only?

221 — A. is the owner of a certain immovable, worth approximately £1,000. He gives to X. a first hypothec on this property to secure a debt of £600 for which A. and his wife B. are *jointly and severally liable*. Later on A. gives X. a second hypothec on the same property to secure a debt of £700 on which A. alone is liable. A. being unable to pay either debt, X. takes proceedings for the realisation of his hypothec. In the course of these proceedings he claims the right, which is contested by B., of reversing the order of his two hypothecs. Is he entitled to do so? What is his interest in making the claim, and what is B.'s interest in resisting it (1)?

(1) DALL. *Per.* 1900. 2. 41.

XIII.—EXTINCTIVE PRESCRIPTION.

222 — A. lends B. 10,000 P.T., repayable in ten yearly instalments of 1,000 P.T., and stipulates that if any instalment remains unpaid for one month after it falls due, B. shall lose the benefit of the term and A. shall be entitled to sue him for the whole amount remaining unpaid. B. pays three instalments punctually. The fourth is not paid till three months after it is due. The fifth and later instalments are left unpaid altogether. A. neglects the debt, and years later he dies. More than twenty-five years after the creation of the debt, A.'s heirs sue B. for the unpaid balance. B. raises the defences : (1) that he is entitled to the short prescription of art. 211 Nat. C.C. provided for "periodical payment"; and (2) that in any case the whole unpaid balance of the debt became payable when the fourth instalment was overdue, and that the term of 15 years runs from that time. For A.'s heirs it is argued that art 211, only applies to rent and interest and similar periodical payments which have a perpetual cause ; while the forfeiture of the term was stipulated in A.'s interest and only took effect at his option.

223 — On the 1st June 1885, A., a Cairo stockbroker, wrote to B., a resident in the town, the following letter : " In accordance with our conversation of yesterday, I undertake to deliver to you 20 shares in the Egyptian Petroleum Company, as soon as I obtain delivery of them myself, that is to say in a few days."

A month passes. B. dies ; and it is not till ten years later that his heirs, who have found A.'s letter among his papers, bethink themselves of calling for performance of A.'s agreement.

A. admits (verbally) that he is still bound by his undertaking and promises to fulfill it, but asks for a few days' grace.

Various accidents prevent either party from taking any immediate further steps at the time. Nevertheless in the course of the same year, 1895, X., a resident in Cairo, having no connection with B.'s heirs, receives a letter from A. in which the following passage occurs : " B.'s heirs have called upon me to perform an undertaking which I gave to B. ten years ago ; I should like to

perform it a soon as possible, so I write to ask if you have 20 or any shares in the Egyptian Petroleum Company."

In 1902 B.'s heirs sue A :—

(1) for delivery of the of the 20 shares, or payment of their value ; and

(2) for damages calculated upon the basis of the dividends of the Petroleum Company since June 1, 1885.

Among other proofs of their claim they adduce X.'s evidence that he received the above mentioned letter—which however he cannot produce ; in case the court is not satisfied with this evidence they ask for an order to produce A.'s books, with a view to finding therein a record of the letter in question. A. resists the claim of B.'s heirs, without however denying that he contracted the obligation in question in 1885, and without claiming to have performed it.

Additional facts in the case :—

(1) The Egyptian Petroleum Company was wound up in 1900—a fact of which B.'s heirs are ignorant ;

(2) The shares of the company, which on June 1, 1885 were quoted at 200 francs, were quoted at from 2,400 to 2,500 between the years 1890 and 1900 ; and when the company was liquidated a sum of 1825 per share was distributed among the shareholders.

(3) Between 1885 and 1900 the dividends varied from 5 francs to 320 francs.

Would the case be affected if it were proved that A. had had 20 shares of the Petroleum Company in his possession at a date subsequent to the operation referred to in the letter of June 1, 1885 ?

Distinguish between the cases : (1) where A. had received the price of the shares from B., and (2) where he had not received the price.

What if X. was A.'s partner in a " société en nom collectif " ?

Suppose that instead of commercial paper A.'s obligation related to land.

How would the question be decided in French law, with its different terms of prescription ?

XIV.—PROOF.

224— A. brings an action against B., the mother of his recently deceased wife C., in which he claims the ownership, on his own behalf, and on behalf of his infant children, of ten feddans of land. In support of his claim he produces a document setting forth a contract of sale of the said land from B. to C., and containing a receipt for the price. The document is torn into twelve pieces, but the fragments have been put together and pasted on to a sheet, and the writing and seals are perfectly complete and legible. A. states that the document was fraudulently torn up by B. on the day of C.'s funeral. B. acknowledges the genuineness of the document, but asserts that it was destroyed at C.'s request, and in her presence, four days before her death, she being on death bed, and desirous that her mother's true intention—which was that the contract should operate as a will only—should not be frustated. Would B.'s statement, if established, operate as a sufficient defence? Upon whom does the burden of proof lie?

225 — A. lent B. a sum of 500 P.T. under a contract in which it was stipulated that no discharge should be recognised unless proved either by a written receipt, or by the return of the document of title. Subsequently A. sued B. for the sum, and B. asked permission to prove his discharge by witnesses. Was he bound by the above recited stipulation?

226 — A. London newspaper recently published the following paragraph :—

" A favourite actress of the Parisian music-halls has had a " warning against the telling of even small fibs. A day or two " ago she went into a high class shop and bought conditionally a " mantle which cost £48. She wanted to wear the mantle at the " races at Saint-Ouen. She did not go to the races, but visited " one of her friends instead. Yesterday she returned to the shop

" and declared that the mantle did not suit her. The manager " took it back after some trouble. But when she returned home " she discovered with dismay that she had lost her purse, " containing notes to the value of £240. Then she remembered " that she had left it in one of the pockets of the mantle, and " returned to the shop with all speed. But the manager declined " to let her have the purse in view of her assertion that she had " not worn the mantle. A police commissary had to be called in " to settle the dispute, and that official advised the actress either " to buy the mantle or relinquish her £240."

On what legal grounds, if any, can the advice of the police commissary be defended?

227 — A. is B.'s creditor for £15. A. verbally directs B. to pay £7 to C. who is A.'s creditor. B. complies and obtains C.'s receipt in writing. A having become insolvent, the syndic of his bankruptcy sues B. for the whole £15. B. defends, as to £7, part of his debt, by producing C.'s receipt, and offering to prove by witnesses his mandate to pay the said sum of £7. Is such proof admissible?

What if the sum paid by B. to C. was £E. 12?

228 — The lady Anissa claims a share of 4 kirats in a house situated in Cairo. The house is occupied by the lady Zenoba, who refuses to allow Anissa access to the house or any profits therefrom. Anissa thereupon sues Zenoba, who produces a contract of sale to herself of the aforesaid share, purporting to be signed by Anissa as vendor, and by her brother and her husband as witnesses.

Anissa denounces this contract to the parquet as a forgery: the parquet, after an inquiry, files the case on the ground that the charge is without foundation. Defeated in her resort to the criminal authority, Anissa continues her civil action, and denies her signature to the contract. The court, on the motion of Zenoba, orders the verification of the signature. Zenoba is unable to produce documents for comparison, and claims the right to prove the authenticity of the document by oral evidence. With the permission of the court she summons the husband and the brother

of Anissa ; the former fails to appear, and the latter swears that he never signed the disputed contract. At this stage the case is adjourned into court for argument. Has the order to file made by the parquet any decisive bearing upon the case ?

229 — A. is a horse dealer ; B. is a chemist. A. sues B. for the price of a horse which he asserts that B. purchased from him. B. produces a receipt from A., to which A. replies by the assertion that the receipt relates to the price of another horse sold to B. at the same time as the one the price of which is now in dispute. A. claims the right to prove his assertion by reference to B.'s books and his own.

If the court admits this latter demand, can it order either or both of the parties to deposit his books at the registry with a view to their examination ?

Supposing that the proof by reference to the books of either party is admitted, by what practical procedure will the proof be conducted ?

230 — A. asserts that B. sold him a house for £E.500, by a private deed dated July 1, 1902. A. is unable to produce a copy of this document, but he can show that it was transcribed and registered (or that one of these operations was performed) on July 2nd. May he prove its terms ? If so, by what means, and against whom ?

231 — A., a landlord, brings an action against B., one of his tenants, for a sum of 13,000 P.T. made up of 10,000 P.T. arrears of rent, and 3,000 P.T. advanced for the purpose of stocking B.'s farm. A. is represented by lawyer P., and B. by lawyer Q.

On the case coming into court for argument, the following incident occurred. P. was speaking for his client the plaintiff and was engaged in drawing the attention of the court to an account book kept by the latter in which he entered all sums paid or received by him in respect of his farm. "I happen to know" said P., "that a corresponding account was kept by B., which would be decisive, if he had the honesty to produce it ! ....." At that

moment P. paused, and, interrupting his speech, exclaimed : "I see that my learned friend has the book I allude to before him at this moment, in his dossier..... I request that the court immediately order its production." In his surprise Q. makes an involuntary movement, revealing to all present that there is in fact an account book among his papers.

"Mr. Q." says the President "will you kindly hand me that book ?"

"The court has no power to examine the private papers of my client" replies Q.

"Be so good as to do what I tell you at once" responds the President. Q. then complies under protest and judgment is immediately afterwards given with the following recital "whereas it is proved by an entry it the account book of the defendant that the sums claimed by the plaintiff are due, the court orders the defendant to pay..... etc."

Is this judgment right? Are the grounds given adequate?

What if A. had refused to give up the account book until a judgment had been given ordering him to do so ; and that then a judgment were given on the merits as above?

(Cf. Nat. Com. C. arts 17, 18 ; Mixed Com. C. arts 18, 19 ; French Com. C. arts 14, 15.)

232 — A. is sued by B. for repayment of a loan of £100. A., admits the loan, but asserts that he has paid it. As he is, however, unable to produce a receipt, he is condemned to pay the amount demanded. The judgment becomes definitive and is executed.

Two years later A. finds the receipts : has he any remedy?

233 — A. revindicates from B. three feddans of which the latter is in possession, claiming ownership by virtue of a sale to his father from X. the former owner, dated 1880. B. admits that X. was formerly the owner, but claims that he himself bought the land from him in 1879. B. produces his title, but A. on his part is unable to produce any proof and loses his case. Some time after the judgment has become definitive, A. finds his title. Has he any recourse? If so, by what term is it prescribed?

234 — A. (a landed proprietor) writes to B. (another landed proprietor) on June 1 offering to sell him a certain piece of land for a certain price. So much as to the facts is agreed between the parties in an action which B. subsequently brings against A., revindicating the land. B. asserts that he received A.'s letter on June 2, and replied on the same day by a letter accepting A.'s offer. A. admits having received B.'s letter, but declares that he received it on June 10 ; that it was dated June 9 ; that he has lost it ; and that previously, on June 5, he had written to B. retracting his offer. B. affirms that he received no such retractation.

Upon whom does the burden of proof lie, and what modes of proof are permissible ?

Supposing that for one reason or another such as the death of the parties, no further facts can be elicited, what is the proper decision to be given?

XV.—COMMERCIAL PAPER.

235 — A. is a native subject and a large landlord in the Fayoum. He gives the following document to Mme. Fatma, the widow of a Greek subject :—

The Director of the Agricultural Bank of Medinet el-Fayoum.

1st October 1903.

" Please pay five hundred pounds, according to the instructions " of Mme. Fatma, to her son Hassan, who is about marry my " niece Zenab, the day after to-morrow for the encouragement of " this young man in well doing and in the hope that he will make " my niece as happy as she deserves.

"*Signed* A."

On October 2, Mme. Fatma endorses this document to her creditor B., who immediately endorses it over again to C. On the same day her son Hassan announces his intention to break off the project of marriage with Zenab. As soon as A. hears of this he writes to the Agricultural Bank directing that the above recited document is to be treated as void. The Bank therefore refuses payment when the document is presented by C. The latter sues Fatma, Hassan and A. before the Commercial Chamber of the Mixed Court.

The latter raise the preliminary defence that the court named has no jurisdiction. Are they right? What defence can they make on the merits?

236 — A., an Alexandrian merchant, has the greatest confidence in his clerk B., who does all his current business for him, A. only reserving to himself the signature of documents, and the more important decisions.

B. one day obtains his master's signature for a document in the following form :

Director of the Credit Lyonnais, Cairo.

" Pay to X., or to his order, two hundred thousand piastres."

Alexandria.

Signature :—

X. is an imaginary person. B. endorses the document in question to C., signing X.'s name. The Crédit Lyonnais honours the draft, and debits A. with the amount.

What is the legal character of the document? Supposing B. to be insolvent, who has ultimately to bear the loss of the L.E. 2,000? Is the question whether or no C. acted in good faith of importance?

237 — On November 1 P. sues X. for the payment of a sum of £50 which he alleges he lent X. two months previously. In support of his claim he produces the following document;

Cairo, September 1, 1903.

"Please pay that sum of fifty pounds to P.

"*Signed* X."

P. states that on the first of September he gave X. £50 for this delegation, which was intended to be addressed to Z., X.'s wakil.

X. says he has no kind of memory of the transaction in question; but thinks it possible the paper may have been a piece of friendly advice given to the Governor of the National Bank, in favour of P.

Z. died on the 28th of October. What is the legal effect of the document? Ought the court, in order to obtain light upon its nature and effect, to take into account the social status, and the previous history and relations of the parties?

238 — V. sells certain immovable property to P., (both parties being Egyptian subjects). The contract contains a receipt for the price — namely £1,000, — but in fact V. only receives P.'s promissory note payable to order at six months from date.

V. immediately endorses the note to his bank (a foreign company) with the direction "credit value to my account."

At maturity the bank presents the note for payment, which P. refuses. V. causes the note to be protested, and in the protest P.'s reason for refusal is recorded — namely that, being threatened with eviction from the land purchased, he is entitled to retain the price.

The bank obtains judgment by default against P. from the

Mixed Court, and in virtue thereof obtains a judgment charge on the land purchased. On opposition P. raises the objection that the Mixed Court has no jurisdiction, pointing out that he and V. are both native subjects, and that V.'s endorsement to the bank was merely a procuration, as is shown by his direction that the value should be passed to his credit.

What decision?

239 — A. sent a cheque for £5 to the treasurer of a certain charity as a subscription. In the course of the day he changed his mind as to the propriety of making this contribution, and stopped the cheque at the bank. Has the treasurer any right of action against A. on the cheque? What if the treasurer had endorsed the cheque to B. who held it in good faith for value? Would it affect the case if A. was able to show that he had been mistaken as to the objects or religious colour of the charity in question?

XVI.—BANKRUPTCY.

240 — A. is a local notable in the Fayoum. He instructs B., a broker and general financial agent at Medinet-el-Fayum, to sell certain National Bank stock for him and delivers him the stock in exchange for a receipt. B. writes to his Cairo correspondent C., a banker, saying : "I have been directed by my client A. to sell for him at the best obtainable price 5 National Bank shares: kindly execute this commission ; the shares are forwarded under cover." C. executes the commission, and credits B. with the price. B. is already in C.'s debt for an amount exceeding the price so credited. In this state of affairs B. is declared a bankrupt. A. sues C. for the price of the stock (1).

241 — A., a shopkeeper in Assiout, orders certain porcelain goods from B., an Alexandria merchant, informing B. that he will direct their common banker, X., to credit B. with the price. A. rashly gives this direction to X., before the goods arrive. When they do arrive, they turn out to be of inferior quality, and not in accordance with A.'s order. Meanwhile B. has been declared a bankrupt. A. writes, as soon as he has examined the goods, to X. and cancels his previous direction to credit B. with the price. X. had previously notified B. of the transfer of the credit, but B. had not acknowledged the communication. On X. refusing to pay out the sum to B.'s syndic, the latter sues him for the amount. Does the fund in X.'s hands belong to A. or to B. ?

242 — A warrant was issued for the arrest of X. as a fraudulent bankrupt. X., however, had judiciously disguised himself and had taken his ticket by the P. and O. steamer from Port Said to Brindisi. Unfortunately he got no further than Ismailiah, where he was identified and arrested by the police.

Can the syndic of his bankruptcy recover all or any part of the £35 he had paid to Cook for his tickets ? If so, on what grounds ?

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(1) Cf. DALL. *Per.* 75. 1. 204 .

243 — On April 1, 1900, A. and B. make a contract to the following effect. "A. gives B. full powers to sell, in lots, A.'s land at Gizeh. A. acknowledges the receipt from B. of £2,000 on account of future profits, and authorises B. to recoup himself from the first proceeds of the projected sales. Thereafter A. and B. shall share the proceeds between them. B. shall be alone entitled to give receipts to purchasers."

On August 15 of the same year A. is declared a bankrupt. On the 18th B., who had up till then sold very little of A.'s land, disposes of a large plot thereof to X. for £500. Shortly afterwards A.'s syndics obtain knowledge of the contract of April 1, and the sale to X.; and sue B. and X. for possession of the land sold to the latter, putting their claim on the ground that the mandate created by the first contract was rescinded by A.'s bankruptcy. B., they say, is merely entitled to rank in the bankruptcy for his £2,000.

B. and X. reply that the contract of April 1 was not a mere mandate, and is unaffected by A.'s bankruptcy; and that B. retains the power, in spite of this event, to sell A.'s land in pursuance of that contract and to encash the proceeds, subject only to the obligation to pay A.'s share to the syndics of his bankruptcy.

Who is right?

Would the rights of the parties be modified:

(1) If the contract of April 1 had been transcribed before the bankruptcy?

(2) If either B. or X. had notice, at the time of the sale to the latter, that A. had been declared a bankrupt?

244 — A. is a French subject, and an emancipated minor, who has been authorised, in accordance with the provisions of the law of France, to engage in commerce. He comes to Egypt at the age of 20, having already been declared a bankrupt in France.

In Egypt he again engages in commerce, and contracts liabilities which he cannot meet. Can he be declared a bankrupt by the Mixed Courts? If not, can the syndics of the French bankruptcy claim to ignore A.'s liabilities incurred in Egypt? Can the

Egyptian creditors claim a right of preference over Egyptian assets, or what other solution do you adopt?

245 — In 1898 a partnership is formed in the name of "A. and Co," for a period of five years, its object being to do cotton-broking business. In 1900 it employs the International Bank of Egypt to issue 20,000 bonds for 400 P.T. each, such bonds being in the following form :—

> **A... & Cie.** — CAIRE & ALEXANDRIE
>
> **Société en nom collectif au Capital de L.E. 35,000.**
>
> Acte Social en date du.....
>
> **OBLIGATION DE 400 P.T. A 6 %**
>
> *Signature*.....

The bank finds subscribers for about half the bonds among its own clients, and takes a commission of 40 P.T. on every bond subscribed. Towards the end of 1902 the partnership is declared bankrupt, showing a deficit of L.E. 90,000, not counting the proceeds of the issues of the bonds financed by the bank, a sum of L.E. 35,000 being held by the bank on this account.

Can the syndic of the bankruptcy refuse to admit the bondholders among the creditors entitled to rank?

Supposing a negative solution is given to this question, and that B., a subscriber for 100 bonds which he has sold to C., has become, subsequently to such sale, the debtor of the partnership for L.E. 400, can the syndic meet C.'s claim by setting off B.'s debt? If so, would C. have any recourse against the International Bank?

246 — On the 1st October 1902 A. (a carpet merchant) gives C. (a wholesale importer) a promissory note for 2,000 P.T. payable at three months from date. On the 10th November C., being short of money, asks A. to pay the note subject to a discount at the rate of 5 %. A., who has frequently obliged C. in the same manner before, acquiesces.

On December 15 A. is declared bankrupt, and the 19th November is fixed as the day on which he ceased payment. The syndic claims from C. the sum received by him on November 10. (Native C. Com. art. 227).

247 — A. takes his tailor B. a piece of cloth to be made into a suit. Shortly after the suit is finished, and before it is delivered, B. becomes bankrupt. Is A. entitled to revindicate the suit? Would it affect the case if he has: (1) paid for the work in advance; or (2) seen and approved of the suit?

XVII.—NATIONALITY AND CONFLICT OF LAWS.

248 — In 1874 A., a French subject, obtains from the Egyptian Government a firman conferring upon him Ottoman nationality.

A. dies in 1902, leaving as heirs a son B. (who, like his father, is a Latin-Catholic) and a daughter C., of uncertain religion, who is married to a native Musulman. C. seeks to prove that A. was born in 1855, and that he obtained his Ottoman nationality on the faith of a false birth certificate which stated that he was born in 1851; he argues that A.'s naturalisation was in consequence void, and that his estate ought to be distributed in accordance with French law.

What court has jurisdiction? What decision? Vary the question by supposing that the naturalisation was granted by the Italian Government.

What if A.'s estate comprised kharadji lands?

If B. is unsuccessful in her suit, has she any recourse against the Egyptian Government?

249 — A., being a French subject, deserts at the age of 22 from the French army and goes to America, where he becomes a naturalised citizen of the United States, his name being still on the list of the "armée active" in France. Ten years later he comes to Egypt, and is registered at the United States consulate at Cairo. In 1902 he sues B., a French subject, before the Mixed Tribunal. B. pleads to the jurisdiction of the court. What decision?

250 — A., aged 22, a native Egyptian subject, under Dutch protection, while in Paris purchases certain jewels on credit from B., a jeweller. B. draws upon A. a bill of exchange at three months from date, which A. accepts.

This bill not being paid at maturity, B. is sued thereon before the Cairo Mixed Court by the bank X. (a foreign company) endorsee of the bill. B. replies by invoking his minority under Dutch law which fixes majority at 23 years. (1)

251 — A. is a British subject, resident in Egypt. His family, which has been established in this country since 1865, came from Canada where his grandfather was domiciled at that date. According to what law would the Mixed Courts determine his legal capacity?

252 — Anissa, age 16, is married in the year 1890 to Hafiz. Both parties are Musulmans, but while Anissa is an Egyptian subject, Hafiz is of French nationality.

A year after the marriage Anissa is divorced by Hafiz. She thereupon addresses a declaration to the Ministry of Foreign Affairs stating that she wishes to reassume the Ottoman nationality which she possessed before her marriage. The Ministry merely acknowledges her communication.

Some time later she has occasion to sue one Abdallah before the Native Court. The defendant pleads to the jurisdiction, on the ground of Anissa's foreign nationality. The latter claims to be an Egyptian subject, and finds two arguments to this effect in the law of 19 January 1869. What are they?

Would the case be different if Anissa's marriage with Hafiz had only been dissolved by the latter's death, and Anissa had subsequently married Abdurrahman, a Mohammedan British subject?

253 — A. and B., both native subjects, and members of the Community of Catholic Copts, are married in 1895 by the competent authority of their sect. In 1897 a child, C., is born to them.

In May 1898 A. adopts the creed of the Orthodox Copts, and enters their community. A month later he applies to the ecclesiastical tribunal of his new community for a divorce, which he obtains, together with an order entrusting him with the custody of C.

(1) Alex., 29 February 1888, R. O. XIII. p. 100.

A day or two previously to A.'s formal admission into the Orthodox Coptic community B. had commenced proceedings against him before the Catholic Coptic Patriarch for a judicial separation; and within a day or two of the delivery of the judgment above recited in A.'s favour, she obtained a decision pronouncing the separation, giving her the custody of the child, and ordering A. to pay her a monthly pension of 500 P.T.

B. immediately takes steps to arrest A.'s salary in the hands of his employer D., who is an Italian subject. What is he procedure applicable to this arrestment? Does art. 473, C. Proc. M. apply? Must the Mixed Court confirm the arrestment?

254 — A., a Coptic lady, is ordered by the competent jurisdiction of her community to pay an alimentary pension of 1,000 P.T. a month to her sister B. Having performed this obligation with regularity for a year, she suddenly ceases to do so, and B. sues her before the native court. In the course of the trial A. marries a Mohammedan, who is also a French subject, and, shortly after the marriage, adopts the faith of her husband.

Does the native Court thereupon become incompetent? Ipso jure? Have the events recited any influence on the merits of B.'s suit?

What if B. was herself already a French subject, and had brought her action before the Mixed Court?

255 — A. was a native subject, a member of the Gregorian Armenian community. As he was also a minor and an orphan he was provided with a tutor by his Patriarch.

At the age of 17 he embraced the Protestant creed, and proceeded to apply to the authorities of the Protestant community for a declaration of emancipation, which he readily obtained. He then proceeded to incur numerous debts to diverse persons, for loans of money, and for clothes and other luxuries, his chief creditors being B. and C., both Greek subjects. Being sued by these last before the Mixed Court he pleads infancy, on the ground that though a minor may, under the stress of conviction, change his religious profession, he has no capacity to take any step which

will change his personal statute; and that consequently he was never validly emancipated.

256 -- A. is a Frenchman, a landowner, a well known horse-breeder, and a resident of Caen. Late last summer he sent B., his head groom, to England to buy stallions and mares. A few days after his departure B. wrote to his master saying that Lord C. was prepared to sell his famous race horse "Pegasus" for a very moderate price; that the horse was in good condition; and that if A. decided to buy it, all he had to do was to write to Lord C. direct, enclosing a cheque for £400.

A. did as his representative suggested, and two days later he received the horse. A few days afterwards—but before the elapse of the time fixed by French law for the discovery of latent defects—he discovered that "Pegasus" had an inveterate weakness of such a character as to entitle him under French law to set aside the sale. He consequently sues Lord C. before the court of Caen, for the rescission of the sale and for damages calculated to cover the expenses of transport, feeding and medical examination.

Is French law applicable to the case?

What if A. was an Egyptian, if B.'s letter was written to him from England to Cairo, and the horse arrived in Cairo after a week's journey? Is English law or are the Mixed Codes applicable? Must the time during which the horse was travelling be subtracted from the time during which objection to latent defects can be taken?

257 — A., a Frenchman, owns immovable property in Egypt. His wife B. wishes to register against one of his houses the legal hypothec to which, under French law, she is entitled by virtue of the matrimonial regime under which she is married? Can the registrar admit such a registration? If he does so, can the hypothec be set up against third parties?

258 — In 1882 A., an Egyptian native woman of the community of Catholic Copts, marries B., a Frenchman. Six months

after the marriage the couple separate, and B. returns to France never to reappear.

For twenty years A. lives with her family after the fashion of Egyptian women, bearing her family name, and speaking the language and wearing the costume of the country.

In 1903 she writes to C., a native landowner in Cairo, consenting to his proposal to purchase from her for £1,000 her house situated in the Abdin Square. Eight days later, having changed her mind and consulted a lawyer she writes to say that she cannot and will not complete the contract, as French law does not permit a married woman to perform such an act without the authorisation of her husband. Advise C.

259 — A. and B., both Egyptian subjects, jointly purchase a 5 P.T. ticket in a lottery officially organised and administered by Transylvanian Government. A. retains possession of the ticket, which ultimately wins a prize 20,000 francs.

B. writes to C. (a native broker and local representative of the Lottery Administration) claiming his share as co-owner (which is not denied by A.) and warning C. to respect his rights when the times comes for payment. C. replies that he will pay the prize-money to the person or persons only whose claims shall have been affirmed by a court of justice.

Has the Native Court jurisdiction? Would the case be different if C. were an English subject?

260 — A., a French subject, dies in Egypt leaving an estate consisting of a business in Cairo, worth about £20,000; Ushury land, worth another £20,000; Kharadjy land, worth £40,000; and £20,000 worth of Wakf land held subject to a Hikr.

His only surviving relatives are three children; a son who is a French subject, and two daughters of whom one is married to a Catholic Copt and the other to a member of the Catholic Greek community; both the sons-in-law are Egyptian subjects.

What court has jurisdiction to administer the estate, and what law is applicable?

261 — An Egyptian subject belonging to the Maronite community married a French woman. A few years later he brought proceedings for a divorce from his wife before the French Consular Court at Cairo. The wife pleaded to the jurisdiction, arguing that she had, by her marriage, become an Ottoman subject, and that consequently the competent authority was the Catholic Patriarch. In the event of the Consular Court retaining jurisdiction, she claimed the application of the Maronite personal law.

262 — A., a native Egyptian domiciled in Egypt, borrowed in 1880 the sum of £1,000 at 5% interest, from B., a Frenchman domiciled in France who was making a long stay in Egypt.

The first two instalments of interest having been paid, A. did nothing further for 18 years. In 1900 B.'s heirs obtained judgment by default from the Tribunal of the Seine. This judgment having acquired the authority of *res judicata*, the plaintiffs applied to the Mixed Court of Cairo for an *exequatur*. A. resists this application on the merits, invoking the benefit of 15 years extinctive prescription.

The plaintiffs claim the *exequatur* as a matter of right prior to the examination of the merits; and in the alternative, on the merits, argue that the French term of prescription, 30 years, is alone applicable to the debt.

263 — A., a French subject, is appointed tutor of B., likewise a French subject. The family council which makes this appointment decides that the legal hypothec shall be restricted to A.'s house in Cairo. Application is made to the registrar of the Mixed Court at Cairo to register this hypothec. Ought he to do so? Supposing that the registration is granted, is the hypothec valid as against A.'s creditors?

What if the restriction of B.'s legal hypothec to the simple property in question was the result (1) of a judgment of the French Consular Court of Cairo; (2) of a Court in France?

264 — A., a French woman, being duly authorised by her husband, sells an immovable situated in Egypt,—being part of her dotal property—to B., an Egyptian subject.

She subsequently claims to be entitled to have this sale set aside on the ground of the inalienability of her dotal property. What decision?

What if it is B. who seeks to have the sale declared void?

What principles are applicable by an Egyptian Court to a similar sale of a share transferable only by changing the registration in a company's books?

What if such sale was contracted in France or in some other country, elsewhere than in Egypt?

Would the fact that the contract of marriage creating the "dot" had or had not been concluded in Egypt make any difference?

265 — A., an Egyptian subject resident in France, contracted with the Munipality of Nimportou to move the equestrian statue of Charlemagne which adorned the Place de l'Opera to a more fitting site opposite the barracks.

A. having failed to perform his contract, the mayor of Nimportou sued him before the Mixed Court of Cairo, within the jurisdiction of which A. had an estate. A. pleads to the jurisdiction.

Cf. art. 2, Mixed Com. C., and art. 632 French Com. C.